



A  
VIEW OF THE  
CIVILE AND ECCLE-  
SIASTICAL LAW, AND  
wherein the practise of them is  
*streitned, and may be relieued*  
within this Land.

Written by THOMAS RIDLEY  
Doctor of the Ciuile Law.

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*Iura sua unicuique professioni sunt seruanda, alioqui nihil aliud  
erit, quàm omnium ordinum confusio. c. peruenit. 11. q. 1.*

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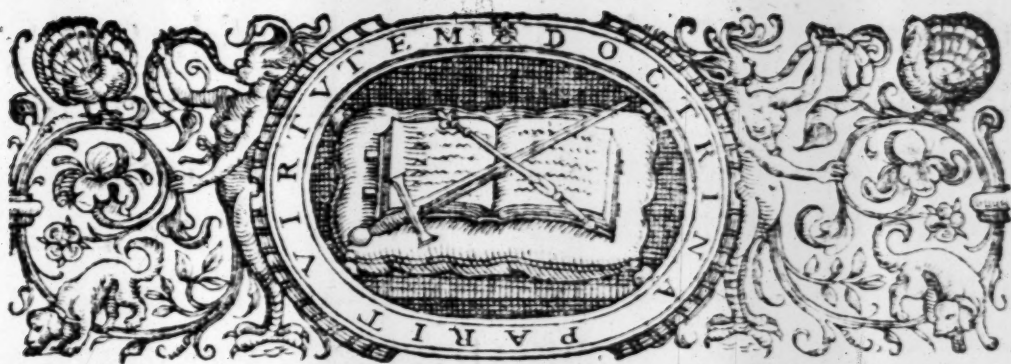
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To the High and Mightie Prince  
JAMES, *by the grace of God, King of*  
great Britaine, Fraunce and Ireland, De-  
*fender of the Faith, &c.*



MOST gracious Soueraigne,  
since it hath pleased your  
Maiestie of your Princely  
care towards the Church,  
and your common wealth,  
to take knowledge of some  
differences that are in Iudicature betweene  
your Ecclesiasticall and Ciuile Law, and the  
Temporall Law of this Land (by which ioynt-  
ly your Maiesties State is managed next after  
your owne most rare prouidence, and the wis-  
dom of such, whom it hath pleased your High-  
nesse to associat vnto your selfe in the great af-  
fares of your Kingdome) I haue bin bold to  
offer vnto your Maiestie this simple Treatise, as

## THE EPISTLE

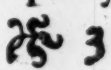
that which doth lay out the cause of those Differences more particularly than any man hitherto hath expressed the same. In comming to which (because I doe speake for those parts of your Maiesties Laws, which are lesse knowen vnto your people, and esteemed no otherwise of them than they see the practise thereof to be here within your Land) I haue thought good, as it were in a brieft, to set out the whole sum of both the Lawes to the view of the people, that they may see there is more worth in those for whom I speake, than was by many conceived to be: so that the profession of the Ecclesiasticall and Ciuile Law may appeare to the world, neither to be ilde nor vnfit for the State; so far as it hath pleased the Royall predecessors of your Highnesse to giue entertainment vnto it, and your Maiestie your selfe to admit of it. In al which there is no other thing sought, than that such grieuances as haue bin of late offered by one Iurisdiction vnto the other, and in consequence, to all your subiects, who follow any suits in the Ciuile or Ecclesiasticall Courts, may by your Princely wildome be considered, and by your authoritie be redressed, if they be found to be grieuances indeed:



## DEDICATORIE.

deed : for now as things are, neither Iurisdiction knowes their owne bounds, but one matcheth from the other, in maner, as in a batable ground lying betweene two Kingdomes ; but so that the weaker euer goeth to the worse, and that which is mightier preuailes against the other : the professors thereof being rather willing to giue Lawes and interpretations to other, than to take or admit of any against themselves. For which, the weaker appeales vnto your Highnesse, humbly desiring your Maiesties vpright and sincere Iudgement to discern where the wrong is, and to redresse it accordingly, which is a worke worthy your Maiesties high consideration. For as the Land is yours, so also the Sea is yours, & the Church is vnder your Highnesse protection, as a child is vnder his Tutor ; so that all the Lawes thereof appertaine vnto your Maiesties care and comfort alike : For which, not onely the whole profession of your Ecclesiasticall and Ciuile Lawyers that now are, but those which shall succeed in those places for euer hereafter vnto the worlds end, will praise and magnifie your Maiesties gracious fauour towards them, and wee that now are will pray to God for the

long

 3

## DEDICATORIE.

long and happie prosperitie of your High-  
nesse, and your posteritie ouer vs, during  
the continuance of this Heauen and this  
Earth, and after the passing away therof, a  
perpetual fruition of the new Heauen and the  
new Earth, wherein righteousness onely shall  
dwell for euer.

*Your Maiesties most humble  
and dutifull Subiect,*

*Thomas Ridley.*



## To the Reader.

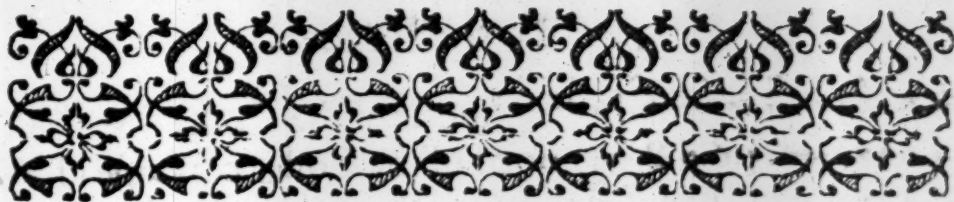
**G**ENTLE Reader, I confesse, as I meditated this Treatise upon mine owne motion ( as I doe sometimes matters of other argument, when my leasure serues me thereto ) so also I doe not set it out to the view of the world upon mine owne motion, but was desirous it should haue bin kept in, sauing that I must obey where I am bound. The thing that gaue me cause to this meditation, was, that I saw many times how meanly men esteemed of the Ciuile and Ecclesiasticall Law of this Land, valuing them by the practise of so much of them, as we haue among vs. And therefore I thought good, although not wholly to unfold the riches of them, yet to make shew of them folded up, in such sort as Mercers make shew of their silkes and veluets, laid up in whole peeces in their shops; whereby it may be seene what great varietie they haue of all these kind of wares, although the goodnesse of the ware it selfe cannot be discerned, because it is foulded up: Beside, seeing how frequent prohibitions are in these daies in causes of either cognisance more than haue bin in former time, I thought it not vnworthy my labour to inquire and see upon what iust grounds they are raised up in this multitude; not of any humour I haue to gaine say the lawfull proceedings of any court (which I reuerence & most readily acknowledge their authoritie in all things belonging to their place) but to know and search out the truth of those suggestions that giue cause vnto these prohibitions. For whenas such Lawes as are writ-



## To the Reader.

sen of these businesses, are written indifferently as well for the one Iurisdiction as the other, no man is to be offended, if the one Iurisdiction finding it selfe pressed by the partial interpretation (as it supposeth) of the other, inquire the ground of such interpretation, & labour to redresse it if it may be, by the right interpretation therof: To the end that either Iurisdiction may reteine their owne right, & not the one be overtopped by the other, as it seemeth to be at this day: And that in such matters (as they cōceine) of their owne right, as depend of no other authoritie but of the Prince alone: which is the thing only that is sought in this little Treatise. And therefore the Reuerend Iudges of this Land are to be intreated, that they will vouchsafe an equal interpretation of these matters as well to the one Iurisdiction as the other, for so it is comely for them to doe; and if they doe it not the other are not so dullsenced, but they can perceiue it, nor so daunted, but that they can fly for succour vnto him, to whose high place and wisdom, the deciding of these differences doth of right appertaine. PENELOPE is said to haue had many wooers comely in person and eloquent in speech, but she respected none but her owne ULISSSES. Such should be the mind of a Iudge, that what/soeuer other apparance or shew of truth be offered, one saying this is the true sence of the Law, and another that; yet the Iudge should respect none but the very true germane and genuine sence thereof indeed. Which if it were religiously or indifferently obserued in euery Court, then needed not this complaint that now is, but euery Iurisdiction should peaceably hold his owne right, such as the Prince, Law, or Custome hath afforded vnto it.

THOMAS RIDLEY.



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*FINIS.*







A VIEW OF THE  
Ciuile and Ecclesiasticall Law : al-  
so wherein it is straighted, and where-  
in it may be relieued.

**B**EFORE I shew how necessarie  
it is for his Maiestie and the Realme,  
to maintaine the Ciuile and Ecclesi-  
asticall Law, as they are now practi-  
sed among vs in this Realme, I will  
set down as it were in a briebe, what  
the Ciuile and the Ecclesiasticall  
Lawes are: then will I shew how  
farre forth they are here in vse and practise among vs: third-  
ly wherein we are abridged and put beside the vse and pos-  
session thereof, by the Common Lawe, euen contrarie to the  
old practise thereof, and the true sence and meaning of the  
Lawes of this Realme and the Statutes in this behalfe pro-  
vided: and lastly, wherein we might be relieued and admit-  
ted to the practise of many things in the Ciuile Law with-  
out prejudice to the Common Lawe; and so both the Lawes  
might know their owne grounds and proper subiects, and  
not one to be iumbled with the other as it is at this day, to  
the great veration of the Subiect. But befoze I speake of  
the Ciuile Law in particuler, I will define what Right or  
Law is in genetall: Law therefore is (as Vlpian saith,  
*L. 10. in fin ff. de Iusticia & Iure*) the knowledge of Ciuile, and  
humane things, the vnderstanding of those things which  
are iust and vniust. This Law is primarily diuided into  
the lawe publicke and the lawe priuate. The publicke, is  
that

## A view of the Ciuile

that which appertaineth to the generall state of the common wealth, for I meane the law publick, not in respect of the forme, that they were publickly made, as we make lawes in our Parliaments, for so all the Ciuile Law is publicke, as made by publicke authoritie; but in respect of the object or end therof, for that they concerne the Church, the Clergie, the Magistrate, and other like publicke functions, none of which leuell at the rule of equitie, or equalitie betweene man and man, as priuat lawes doe, but ayne at that which is most fit in generall for the common State.

The priuat Law, or the priuat mens Law, is that which concernes euery singular mans state, which, for that it is occupied in giuing euery man his owne, it must of necessitie be proportionable to the rule of Equalitie and Iustice.

Private Law, is of three sorts, the law of Nature, the law of Nations, and the law Ciuile.

The law of Nature, is that which Nature hath taught euery living creature, as the care and defence of euery creatures life, desire of libertie, the coniunction of male and female for procreation sake.

The law of Nations, is that which common reason hath established among men, and is obserued alike in all Nations, as distinctions of mens rights, building of houses, erecting of Cities, societie of life, iudgements of controuersies, war, peace, captiuitie, contracts, obligations, succession, & such like.

The law Ciuile, being largely taken, is the law that euery particuler Nation frameth to it selfe, as the Athenians laws, and the lawes of Lacedemon, in which sence also, the law of England may be called the Ciuile law, for that it is the proper and priuat law of this Nation: but in more strict sort, the Ciuile law is the law, which the old Romanes vsed, and is for the great wisdom & equitie therof at this day, as it were, the common law of all well gouerned Nations, a very few only excepted.

And certainly, albeit sundry other Nations by the light of Nature, haue many Rules & Maxims of the Ciuile law: yet, if all the constitutions, customs, & lawes, of all other people  
and



and countries were put together (I except none, saue  $\text{\textcircled{h}}$  lawes of the Hebrews, which came immediatly from God) they are not comparable to the law of the Romans, neither in wisdom no; equitie, neither in grauitie no; in sufficiencie. Whereupon it is, that most of other Nations, (sauiug our owne) although they receiue not the Ciuile law wholly for their law, yet they so much admire the equitie thereof, that they interpret their owne lawes therby. *Peckius de regul. iuris reg. Que à iure cōs regul. 28.*

The whole Ciuile law it selfe, is reduced or brought into 4. Tomes, whereof the first containeth the Digest or Pandects, taken out of 27. old reuerent lawyers works, wherof sundry were befoze the comming of Christ, other flourished in the Emperors daies, eue vnto  $\text{\textcircled{h}}$  time of Maximinus, as it appeareth by Spartianus & Lampridius, in  $\text{\textcircled{h}}$  life of the said Emperoz: which said Tome is diuided into 50. bookes, of which, euery one cōtaineth sundry titles of great wisdom & varietie.

To this Tome, I adde the Institutions, which are a briebe of all the former bookes, composed of purpose by the Emperoz in the behalf of yong learners, that therby hauing the whole Digest or lawe into a Compendium of 4. books only, they might with more alacrity, go forward in  $\text{\textcircled{h}}$  study of the lawe hauing, as it were,  $\text{\textcircled{h}}$  first Elements of the whole profession in this little Treatise; wheras otherwise without  $\text{\textcircled{h}}$  help herof, their weak minds might be clogged with the multitud & varietie therof, and so either altogether leaue their studies, or with more labor & diffidence (which oftentimes discourageth young mens minds in a long matter) come to the end therof, to which, by the direction of this briebe, they might sooner attaine vnto, and that without much trauell or distrust.

The Digests haue their name, of that they are put into a comely order by the Authoz, ranging euery booke & title into his proper place, such as either the course of Nature affords them, or are fittest for the practise of the profession.

The same book again, is called Pandects, of the græke words  $\text{\textcircled{h}}$  Πανδέκτα, for that it cōpriseth in it self, al whatsoeuer Iulian drew out of 15000. verses of the old bookes of the law.



The Institutes are so called because they are as it were masters and instructors to the ignorant, and shewe an easie way to the obtaining of the knowledge of the Law.

The matters wherein the whole law is occupied, are either the persons in the common wealth, or the things belonging or not belonging to them, or the actions whereby men doe claime in iudgements such things as are due vnto them by law.

Upon a more particuler, diuision the whole Digest is diuided into seauen parts: wherof the first part standing vpon fower bookes, containeth the principles, and as it were, the first elements of the Lawe, as what Justice and right is, from whence the Ciuile law hath his beginning, what persons be the obiect of the Ciuile lawe, what Magistrates the common wealth of the Romanes had, by whome either the lawes were made or executed: the diuers kindes of Jurisdictions which those magistrates vsed; mere, mixt, or simple, according to their place: the corrections which the lawe vsed against such as disobey the Judge, either in not appearing, or not performing that which is iniointed them: what prouision it made against such as by violence rescued men out of the Judges hands: what Volidaies there were, wherein the Courts were not held: what order the Lawe tooke against the plaintife, that hauing cited the defendant had no Libell ready to put into the Court, vnlesse happily otherwise the parties vpon priuate agreement compounded the matter betwene them: who were to be admitted aduocates, and what causes bard them from that office: what is the office of a Procurator, Solicitor, or Sindict, or Factor; and vnder what cautions they were admitted, if they had no Piorie, or Mandat, or the partie principal did not in presence authorize them: how they were punished who vpon reward tooke vpon them to bere men vniustly in the Law, in manner as common Barators doe: what persons hauing lost opportunitie to alleage any thing for themselves beneficiall in Law, may be restozed thereto againe, as Pinos and such other as by feare or craft of the aduersarie haue bin  
 ed 22 diuen

Ortaen away from their lawful defence: how persons of common trust, as Barriners, Inholders, and suchlike, are bound by Lawe to restore such things as they haue taken in charge to keepe.

The second parte, being distributed into viij. booke, yeeldeth matter of Judgement, as who may be Judge and who not: where and befoze what Judge euery one is to be conuented: how many kindes of Judgement there are, Ciuile, Criminall, and mixt of both: by what actions things that are ours by right of inheritance may be chalenged, whether they be corporall or incorporall, what action the Lawe affordes, if any man conceale that is ours, that we may come to the sight thereof: what action lyeth against him who by euill persuasions or leude inticement hath corrupted another mans seruant, or hauing run away by his ill counsell, hath concealed him from his master: what prouision the Lawe hath against Dice-play and such as keepe Dicing houses: how he is to be punished which being put in trust to measure any mans ground, makes a false report of the measure thereof: that no man hinder a corse of a dead bodie to be carried to buriall, or to be buried in such places as he and his predecessors haue right vnto, or to build a Tombe to that purpose, and beautifie the same.

The third part imbracing xij. booke, concerneth personall actions, which rise not of cause of right or possession, but of couenant and obligation: as things credited or lent in a certaine summe, the meanes how to recouer the same if it be denied, that is by oath of the partie that denieth it, vnlesse hee may bee conuicted either by witnesse or instrument that hee hath forsworne himselfe: how many kinds of oaths there are, voluntarie out of Judgement, necessarie exacted by the Judge in doubtfull cases, where otherwise there wanteth prouise to manifest the trueth: Iudiciall, such as one partie offereth to another in Judgement, and cannot be refused without iust cause: and lastly, that which the Judge offereth to the plaintife, as concerning the value of the thing which is in strife, or the charges that he hath bin at in recovering of



the same: what exceptions there lyes against Obligations, as that which for cause was giuen, and cause did not follow: that the cause was dishonest, for which that is challenged that was giuen: that the summe was not due which was paid; and therefore not to be exacted, but to be repaid: actions for things lent for a certaine time and to a certaine vse: actions for things pawned: actions that either passengers haue against Mariners for the goods or ware that they haue brought into the ship, or Mariners haue against Passengers for their freight: actions of eiectment wherein the passengers and Mariners are bound each to other for contribution of the losses of such things that haue bene cast into the sea in the time of a storme or tempest, according to the qualitie and quantitie of the goods they haue in the ship: actions whereby masters are bound to answer for their seruants contracts, and fathers for their childzens, in such things, or negotiation as they haue put them in trust withall, sauing where the child borroweth money without his fathers priuie for riot, and for such purpose as his father hath no vse thereof: Remedies for women, when by weakness of their sexes, and lack of counsell, they haue inwapt themselves in suertiship for other men: action of compensation, where a debt is demaunded, for which an equiualent portion hath bene receiued in lieu or satisfaction thereof: actions of mandate or commaundement, wherein one hath done some worke or laid out some money vpon an other mans mandate or word, and yet when he requireth allowance thereof, it is denied him: actions of societie or fellowship, wherein either the societie is required to bee maintained, and the money put in common bank to be diuided: actions of bargain and sale, either pure or conditionall, the bargain being once made, the losse and gains that after happeneth is the buyers, vnlesse the seller retain some further right in the thing sold vnto himselfe: actions of letting or setting either of the vse of a person, or the vse of a thing vpon a certaine hyer: actions of change and suchlike.

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The fourth part being digested into eight bookes, ministereth actions for such things as are accessarie to contracts, such as pawnes and pledges are, which are giuen for the better securitie of the contract: actions for restitution where in a man hath bene deceiued in a bargaine more then the halfe value of the thing sold, or wherein the seller hath concealed some fault in the thing sold, which he ought by Law to haue reuealed, or promised some qualitie in the same, which was not in it, or where the thing sold, hath bene euicted, by an other, out of the hands of the buyer, himselfe vsing all iust defence of Law for himselfe: actions for interest and vsurie, and how many kinds thereof there bee that men vse by land, lucratozie, compensatozie, and punitozie; whereof the first is altogether vnlawfull, the other two allowed where either iust gain ceaseth, or iust losse followeth, vpon that occasion, that which is lent is not paid according to the day of couenant. Sea vsurie, otherwise called nautick vsurie, is greater then land vsurie, and yet allowed by Law, for that the seafaring man takes vpon himselfe the danger of the transporting thereof, and securing the same at such place as it is appointed to be deliuered. In deciding of matters of controuersie, the Law proceeds sometimes by witnesses, sometimes by instruments, sometimes by presumptions, where knowledge or ignorance of fact or Law is presumed. Spousals are mutuall promises of a future marriage: marriage is a lawfull coupling together of man and woman, the companie and societie of the whole life, the Communion of all Diuine and humane rites and things, and of one and the same house, wrought by the consent and mutuall good will of the one towards the other: in espousals and marriages is to bee considered, who is to bee ioyned together, at what yeares, and by whose consent: there doth wayte and attend vpon Marriages, Joyntures, Dowries, and such like, and sometimes Diuorſe, which is so called of the diuersitie of the mindes of those that are married; because such as are diuorſed goe one a diuers

diuerse way from the other. The causes wherupon Diuorces growe, are Adultery, deadly hatred one to ward another, intollerable crueltie, nērenesse of kindred and affinitie in degrēes forbidden, impotencie on the one side or the other: actions of Dowrie after diuorce or separation; actions against a mans wife imbeaselling away his goodes; actions against a husband, disclayming his owne childe; and his wife being with child, if he make doubt thereof, meanes how and where she shall be kept vntill her deli-uery, so that no false birth shall be put in place of the true childe; or that she abuse not her husband or the next heire with a false shewe of that which is not. Tutelage and gouernment of children vnder age, which is either testamen-tarie, or due to the next of kinne, or datiuē, all which are ei-ther to be confirmed or disposed of by the Magistrate. Ad-ministrations of Tutors and Curators, and how farre they are indangered by their office, and wherein they are to in-terpose their authoritie and consent, and for what actes the pupils or minors may be sued, done by the tutors or cura-tors; how any may be argued to be a suspected tutor or cura-tor; and how and by whom he may be remoued, if there ap-peare iust cause of suspicion against him. A Tutor is chiefly set ouer the person of the childe, secondly ouer his goods: but the Curator or Gardian is chiefly set ouer the goods, and then ouer the person of the child: children (their father being dead) by order of the Judge, are to be brought vp with their mother, vnlesse she hath fled vnto a second marriage, which if she haue done, then is he to be brought vp with some of his nearest kinne, such as is knowne to be an honest man, and will haue a care of his good education; with whom the Judge is to allowe him such maintenance, as all his stock be not spent therein, but euermoze something be left against he come to full age. When the time of Tute-lage or curatozship is ended, they are to render accompt vn-to the Judge, what they haue receiued, and how they haue expended the same, and what residue is left, and according as their pzoofes are, either by oath, or otherwise, so the Judge  
either



either alloweth, or disalloweth the same. If the Tutor or Curator prove bankrupt, or unable to satisfie the Pupill or Minor, then lieth an action against their suerties for the satisfaction of the same; and if both of them faile, then lieth it against the Judge, or Magistrate, if either he haue not receiued any caution at all of the Tutor or Curator, or hath receiued an vn sufficient caution, or vn sufficient suerties, knowing them to be vn sufficient; otherwise he is not to secure fortune and future cases of the child: the Tutor or curator are to sell nothing of those things that are the childrens, sauing such things which by keeping cannot be kept, vnlesse they haue the order or decre of the Judge thereunto, which the Judge is not to decre, vnlesse the child be so far in debt that it cannot be satisfied without selling some part of the other goods, or there be some other like iust and necessarie cause like vnto this which may not be auoided. As Minors haue curators and gouernors, so also mad persons and prodigall persons are appointed to haue gouernors by law, for that they can no moze gouerne their owne state then the others can. Prodigall persons are they that know no time nor end of spending, but riot or lauish out their goods without all discretion.

Under the fift Section, which compriseth in it, nine booke, are conteyned last Wills and Testaments, and who they be that can make the same: and how many kinds thereof there be, solempne or militarie, and they eyther put in writing, or else p vncupatiue: what is an vniust, or void Will: what is to be thought of those things, which are found eyther to be blotted out, or interlyned in a Will: how Heires or Executors are to be instituted, or substituted in wills, and vnder what conditions they may be eyther instituted, or substituted in the same: What time an heire hath to deliberat after the Testators death, before he proue the Will: what is a military testament, & what priuiledges it hath: how the inheritance may be eyther got or lost: how Testaments are to be opened, published, and writ out: what mens Testaments are not to be opened, and published: Of the punishment of  
C
such

Such, which a will being ertant, seeke by administration, or  
 some otherlike meanes to possesse the goods: and of those  
 which either forbid, or compell any man to make a Will: Of  
 the power or right of Codicils: of Legacies, and bequests,  
 as what things may be bequeathed, and what not, to whom  
 any thing may be bequeathed, and of the signification of the  
 words, and things which doe appertaine vnto Legacies: of  
 yearly and monethly legacies, what time they be due, in the  
 beginning of the yeare, or in the end: which of them be pure,  
 and which conditionall: Of the vse, profit, and benefit of  
 any thing bequeathed: of dwelling, and workes of seruants  
 bequeathed: of Dowry bequeathed, and what profit the Le-  
 gatorie hath thereby: Of choise or election bequeathed: Of  
 wheat, wine, & oyle bequeathed, and what is contained vn-  
 der euery of them: Of ground furnished bequeathed, and  
 the instruments thereto belonging, and what is to be vnder-  
 stood by that bequest: Of store bequeathed, in Latin called  
*Penus*; what is comprised vnder that word: of household  
 stuffe bequeathed: of education & bringing vp bequeathed:  
 of gold, siluer, womens attire, ornaments, and such like  
 bequeathed, and what is to be vnderstood by euery of them:  
 how Legacies may be taken awaie: Of thinges that are  
 doubtfull in a Will, and how they are to be vnderstood: Of  
 those things that are left for punishment sake in a will, whe-  
 ther they be auaylable, or otherwise: Of those things which  
 being bequeathed in a Will, are counted notwithstanding  
 as not bequeathed: Of those things that are taken away  
 from the Legatories in the Will, as vnworthy of them: Of  
 conditions, demonstraions, & causes; what force they haue,  
 and how they preuaile in a Will. Of the Law *Falcidia*, what  
 it is, and how men thereby are restrained, for bequeathing  
 any more, then the thre parts of their goods, so that a fourth  
 part thereof should still remaine with the heire; & if any man  
 had receiued in Legacie more then he might by the law *Fal-*  
*cidia*, that he should put in band to restore that, if any vn-  
 knownen debt after should appeare, so the same were true  
 debt: at what day a Legacie becomes due; that is streight  
 from



from the death of the Testator, vnlesse it be left to be paid vpon a certaine or vncertain day, or vnder a condition; and that the heire enter into band to pay the legacie when the day comes, or the condition happen, and if he refuse to do it, then the legatorie to be put in possession therof vntill the day or condition happen.

The first part spreading it selfe ouer seauen Bookes, handleth matters of possession of goods, or administration thereof, not growing out of the Ciuill Law, which only makes heires, and giueth right of succession, but out of the Pretorian Law, or Law of conscience, which in equitie calleth sundry to the succession of other mens goods by administration, where there is no Will, and in some cases where there is a Will, as where the will is concealed, or the Crecutor renounceth the will, but if the will once appeare, then the administration forthwith ceaseth. In cases where Administrations are to be graunted, the children of the deceased haue libertie to take it, within a yeare after the death of the deceased, and if they be further off of kind, then they haue onely a hundred dayes to take it in, vnlesse those which are to take it are Infants, mad, deafe, dumbe, or blind, in which cases there is a longer time assigned. The Pretor graunted administration not only according to the tables of the Testament; but many times euen against the tables of the Testament: as where a childe is not disinherited in his Fathers will by plaine termes, but passed over with silence onely, as not remembred; or that the childe was not bozne at the tyme of his death, & so not knowne whether any such child beare liuing, or to be hoped for or not: In which case if it doe after appeare, the Mother is put in possession of that which is the childes part. If there appeare no Will, the Administration is committed in this order, First, the children of the deceased are admitted: Secondly, those that are next of kind in the Male line: Thirdly, those that are next of kind in the Female line, (which difference notwithstanding betwene Male & Female) at this day is taken away, and they that are next of kind are equally admitted of their ser;

Lastly comes those which haue right thereto, either in  
 that they are man or wife. The Law sundry times, where  
 a thing is done, or intended to be done, against an other  
 mans right, and there is no prouision for it in Law, yeldeth  
 the partie grieved an Interdict or Iniunction to hinder that  
 which was intended to his preiudice, As where one buyl-  
 deth an house contrarie to the vsuall and receiued forme of  
 buylding, to the iniurie of his neyghbour, there lyeth an  
 Iniunction de noui operis nunciacione, which being once  
 serued, the offender is eyther to desist from his worke, or to  
 put in suerties, he shall pull it downe agayne, if he doe  
 not within a verie short time auow the lawfulness therof.  
 Againe, there lyeth an Iniunction where hurt is not yet  
 done, but feared to be done; as where a house is ruinous,  
 or the eues, or any outcast worke thereof hangeth dange-  
 rously ouer the way, so that it is doubted it will fall and hurt  
 some that passe by, the owner or Lord thereof is to put in  
 suertie to the Magistrate, that if any be hurt, or miscarrie  
 thereby he shall answer for it. If any cause the water of  
 the ryuer, or raine water to run an other course than befoze  
 time it was wont to doe, and that the neighbours are like  
 to be preiudiced thereby, the Law yeldeth an Iniunction,  
 eyther to staie the worke that is intended, or to secure the  
 neyghbours for the hurt that is like to follow thereupon.  
 If Customers, Collectors, or Colledge-gatherers exact more  
 subsidie, or other like publike dueties then by Law they  
 ought, or distraine any mans goods, vpon pretense therof,  
 or staie in their hand such dueties as they haue receyued,  
 whereby the partie that hath paid it falleth into any forsey-  
 ture, or that they repaire not the publike high wayes, in  
 which respect subsidies, tributes, and other such like dueties  
 are giuen to Princes, they are to be punished in the double  
 value of that which they haue receiued, and otherwise to be  
 fined for their ill dealing in that behalfe. In giftes which  
 are purely giuen, or vnder a day, or condition, and specially  
 in those that are giuen in contemplation of death, which are  
 compared to Legacies themselves, a right passeth without  
 deliue.



deliuerance, and giueth sufficient matter of challenge vnto him to whom they are giuen. The meanes or waies where- by the Lordship or right of any thing is gotten, be it natu- rall, as by the first occupying the same, by finding the same, by bringing it into a forme or fashion, by gayning by the sea or ryuer, by deliuerie, or such like: or be it by ciuill meanes, as by getting the possession of any thing by good title, and good faith, so long as it will make a iust vsurpation, or pre- scription, by holding it as heire, by holding it by a gift, by taking it vp as a thing forsaken, by holding it by legacie, dowrie, or inheritance, by comming to it by sentence defi- nitue, or interlocutoy, by confession of the aduersarie, by cession of the partie, by authoritie of the Iudge, and the same haue been fraudulently alienated by the debtors, there lieth an Iniunction to put the partie iniured into possession. All Iniunctions for the most part are prohibitoie, and serue either to get, or to keepe, or to recouer possession, and are cal- led commonly by the first name of the writ, as where one is denyed the possession of inheritance belonging to him, an Iniunction is graunted him to put him in possession, called Quorum bonorum, or if it be for a legacie, Quod legatorum, and if it be in generall cases, Ne vis fiat ei qui in possessionem missus est: That he that hath gotten the custodie of the Will exhibite it: That no priuat buylding, or such like, be set vp in a holie and sanctified place, and if it be that it be puld downe againe: That no vsuance be done in publike places, or high wayes, other then such as by the Law are al- lowable: That publike high wayes be repaired: That no- thing be done in any Riuer, or the bankes thereof, where- by Ships or Barkes may not passe thereon: That nothing be done in any common streame, whereby the water should be forced to run otherwise this yeare, then it did the last Sommer afoze: That it may be lawfull for euery man to sayle or rowe in any publike streame: That the bankes of the ryuer be repayred. Of force, and force armed, where two are in possession of one thing, and nexther of them came by the same by force, or by secret flight, or by

sufferance of an other, there lyeth an Iniunction for continuance of either of their possession, called *uti possidetis*: That a man may vse such priuat way, as he hath vsed the yeare past, and repayze the same without interruption of an other: That no man turne away the daily running water, or the water which falls in Sommer from an other mans house, or ground to his hinderance: That water courses in ryuers, and other like places be maintained: That such as haue right to draw water out of any spring, or well, be not forbid the vse thereof, and that euery one haue free libertie to cleanse, purge, and to repaire the same, if there be any decay in it: That no man be forbid to scoure, purge, or cleanse his priues, sincks, or vaults: That whatsoeuer is done by open force, or secret subtilty, be restozed into place it was, befoze such force or subtilty was done, vnlesse the partie griued release the same: That he that holdes any thing at an other mans will, restoze the same vpon competent warning, or knowledge giuen him thereof: That a man may lop or cut the boughes of an other mans tree annoyng his ground, if after warning giuen thereof, the owner thereof do not refozme it. That it be lawfull for a man to gather such fruits of his, as fall from his owne tree into an other mans ground, without any trespass to the owner of the ground, so that he gather the same within thre dayes after they are so fallne; for otherwise the law presumes he makes no reckoning of them, and fruites lying vpon the ground doe easily putrifie: That a man may challenge his children out of an other mans hand that holdeth them from him: That a Tenant after his Lease is expyzed may remoue & quietly carry away such things from the farme, as he brought thither, so that the rent be paid, and those things which he brought thither were not bound for the paiment thereof. Actions are taken away, and possessions maintayned by exceptions, prescriptions, & pzeiudices, which themselues are many times in steed of actions, as is the exception *de re indicata*, which is an exception that determineth the cause in controuersie. Of Exceptions, some are perpetuall and peremptory, some are tempo-



tempozal and dilatoz; Perpetuall and peremptoz are they which euermoze haue place & can never be auoyded; Tempozall and dilatoz are they which are not euermoze in place, but may be auoided: Exceptions are alleaged either because that is done which ought to be done, or that is done that ought not to be done, or that is not done that ought to be done. Of pzecriptions likewise some are perpetuall, some tempozall; the effect of eyther of them is to determine the actioney ther in the maner of doing, or by the time when it was done, or by the place where it was done, or by some other like circumstance.

An Obligation is a bond of the Law, whereby a man is necessarily bound to pay some thing to an other man: Obligations arise eyther out of bargaines betwæne man & man, or out of some offence that is done: Obligations by bargaines are pzocured eyther by some thing that passeth betwæne the parties, that doe contract, or else is effected by words, or consent. Out of obligations spring actions, which are nothing else but a right to pzosecute that in iudgement which a man pzetendeth to be due vnto him, whereof there are two sorts; of which one is a challenge for right of a thing due, thother a sute against a person for some offence or trespass done.

The seauenth & last part being deuided into five Bookes, treateth of Obligations which stand in wordes, and their effect; how far two or moze pzincipall debtozs are bound to the creditoz, in the whole, or euery one for his owne part: Of Suerties, and how far they are bound, and whether the discharge of the one be the release of the other: & by how many waies Obligations by wordes are dissolued or released, by renouation, by payment, by acceptation of the debt not paid, as if it were paid. Of Obligations some are ciuill, as those which haue bene heretofore handled, some Pzetorian or pertayning to the Chauncery, as those whereby Tutozs, Curatozs, & Pzotozs, enter into land vnto a child, his state shall be safe, th it is committed to their hands: That, that shall be paied which the Iudge ceaseth: That the Plaintife shall

shall ratifie and allowe that which his Iudges shall doe for him, in iudgement, and such like. Criminall Iudgements are priuat or publike, that is, they are commenced eyther vpon priuat offences, or vpon publike faults and suits. Priuat offences concerne priuat mens reuenge and iniuries. Publike, the reuenge or iniurie of the whole State. Priuat offences which had ordinarie proceedings, and ordinarie punishment, were many, among which Theft is the chiefest, which is a deceitfull fingerling of an other mans goodes, with intent to gaine eyther the thing it selfe, or the vse or possession thereof, so that the mind alone maketh not theft, but the act ioyned to the mind, be the quantity neuer so small. Of Theftes, some are manifest, other not manifest; manifest is that wherein the offender is eyther taken in the deed doing, or taken befoze he could cary away the thing stolne thither whether he intended: the punishment whereof was fower double the value of that, which was stolne: Not manifest was that wherein the party offending was not taken in the deed doing, and the paine thereof was the double of that which was purloyned, or taken away. If any pilfery or theft be done in a Ship, Tauerne, or Inne, the Master of the ship, tauerne, or Inne, is to answer double the value thereof, if the same be done by himselfe, or their selues, or any of their mariners or seruants: for it beho- ueth them to haue honest men, whom they are to imploy in such seruices: But if it be done by any of the passengers, or guests of the house, the owners of the ship, tauerne, or Inne, are not to answer for the same, for they cannot turne away such guests as come into their house, neyther in all likelyhood know they the qualitie or condition of their guests. If any man priuely, vnwitting the owner thereof, cut downe, hacke, or barke any tree of any sort whatsoeuer, or those that are of the nature of trees, as Iuey reedes, willows, so that they be spoyled, he is to answer the double value of that he hath cut downe & spoiled: and further, if it be a Vine tree, to be punished as a robber. He that taketh any thing away from another by violence, is to be punished in



in the worth foure fold, for that it is a sin more grievous then theft: If any man, vpon any ill intent, make a Tumult, wherby any hurt cometh to any man, hee shall answere double of that the party is harmed in: If any, vpon a burning of a house, or the fall thereof, or vpon a shipwreck, or the spoiling of a boat or ship, steale any thing away, or being put in trust to keepe any thing thereof, conceale the same, he shall pay the foure double of the same; but if any man set the same a fier himselfe, he is either to be cast out to wild beasts, or is to be burnt with the same fier he went about to burn another with. If any haue spitefully contumeliously iniured another man his wife, or children, in deed, word, or writing, they are to forsaite so much as the partie grieved shall esteem himselfe iniured by, or the Judge shall tax it at. A famous Libell is where a man hath of malicious purpose writ, compounded, or set out any thing to the infamie of another, without a name, or with a name, and the punishment therof is death, and anciently was, that he lost the power or libertie to make a Will; the like punishment followeth him that hauing found an infamous Libell, doth not by and by spoyle the same, that the knowledge thereof come not abroad, especially where the matter thereof is capitall or worthy death. Extraordinarie crimes, are those which haue no ordinarie punishment appointed them, but are arbitrarie at the Judges appointment, such as are Sollicitors of other folkes wedlockes, and Hards chastities, although they misse of their purpose; such as of purpose cast myze, dirt, or any like filth vpon another, to the intent to disgrace him: such, as being with child, of purpose cause themselves to miscarie: Such as keepe brothell and bawdy houses, or other vnlawful company: Juglers, and such as carie about Snakes, and other like Serpents and trumperie to put men in feare: Such as hide and suppress the Corne, to cause the price to be dearer: Such as eyther make, or vse false waights wittingly; for all which, because there is no proper punishment prouided in the Law, they are referred to the punishment of the Judge, who is to punish them according to the qualitie of the fact,

age, and vnderstanding of the offender, and other circumstances according as he shall thinke good; so, notwithstanding that he excēd not a conuenient measure therein, neither stretch the same to death: but vpon some great and weightie cause, he is to be content with meaner punishment, as tēporall banishment, whipping, or some moderat pecuniarie mulct. For violating or defacing another mans sepulcher, Infamy was imposed, besides a pecuniarie mulct to be diuided betwene the Prince and the partie grieved, but if any dig vp the corse of the deceased, the punishment is death: If any, by feare of his office or authoritie, wzing any money from any man, or exact more fees in any matter than hee ought to doe, or cause him to marry or doe any other thing he would not doe, the forfeiture is foure double the value of that which hath bene taken, beside further punishment at the discretion of the Judge. Such as driue mens cattell out of their ground, or seuer them from the flock or heard, with intent to steale them, if they doe it with a weapon like vnto a Robber, are condemned to bee throwne to wild beasts, otherwise are more lightly punished according to the discretion of the Judge. Such as in Judgement take money on both sides, or taking vpon them, the defence of one side betray the cause and take money on the other side, are infamous by law, and are punished at the discretion of the Judge. Such as receiue theues and other like malefactor's are punished, in like sort as the theues or malefactor's themselves are; specially if they haue assisted them in their wickednesse: otherwise, if they onely knew it and receiued them, they are more mildly to be punished, specially if the offenders were their kinsmen: for their offence is not like theirs which entertaine those which are no kin vnto them at all, when as it is naturall for euery one to regard his own blood: and fathers are many times more carefull for their childezen then for themselves; but if that hee that receiued them knew nothing of the offence, then is hee altogether to be excused. Such as bzeake prison are to bee punished by death, because it is a certaine treason to bzeake the Princes ward,



ward, but if they scape by the negligence of the keepers, against whom the presumption lyeth ever in this case, they are more lightly to be punished. If any commit Burglarie, breaking up a doze or wall, with intent to doe a Robberie, if they be base companions they are to bee condemned to the Mines or Gallies; but if they be of better reckoning, they are to be put from the ranke or order wherein they are, or to be banished for a season. Juglers and like Impostors which goe about deceiving of the people with false tricks and toies, hookes and such like, which insinuat themselves into other mens houses, with purpose to steale, are punished at the discretion of the Judge. If any steale or take away any thing out of the inheritance of another man, befoze either the Will be pꝛooved, or adiministration be taken; an action of theft lyeth not, because the inheritance, during the time, was counted no bodies, but hee is to be punished by the discretion of the Judge; yea, though it were the heire himselfe that did it. Cosenage, whereby a man craftily suppresseth something he should not, or putteth one thing in anothers place, to the deceit of him that he dealeth withall, or corrupteth such wares which hee uttereth, or doth any other thing collusozily, which is called of the Law *Crimen Stellionatus*, of a little vermin or creature called Stellio, much like to a Lizard, most envious to man, is censured by some ignominious and shameful punishment, or by disgracing the person, by putting him out of the Office, Place, or Order he is in, or by inioyning him some servile worke, or by banishing him for a time, or by some like punishment, at the discretion of the Judge. If any plough up a Mere balke, or remoue any other marke which hath accustomed to bee a Marke or bound betwene ground and grounds, which aunciently was counted reuerend and religious among men the offence is punished either by a pecuniarie mulct, or by banishment, or whipping, at the discretion of the Judge. Unlawfull Colledges, Corporations, and assemblies, gathered together to bad vles, as to eating, drinking, wantonnesse, heresie, conspiracie, as punished are publike Routs or Riots, other

otherwise at the discretion of the Judge : All these, before recited, are called Populer Actions, because, not only he that is iniured, but euery other honest subiect may peruse and prosecute the same.

Publick Judgements, are such which immediatly pertain to the punishment of the common wealth for example sake, and are examined, tried, and punished by a publicke order appointed by Law, the partie grieued, making himselfe partie to the suite, and following the same; the partie accused in the meane while remaining in prison, or putting in suerties for his apparance, and the partie grieued for the prosecuting of the same. The chiefest of which sort is Treason, which is a diminishing or derogation of the Maiestie of the people, or Prince, on whom the people haue collated all their power, which is punished with death, and confiscation of the Lands and goods of the offender, and the eternall abolishment of his memorie. The next is Adultery, which is violatting of another mans bed, whose punishment aunciently was death, both in the man and in the woman, but after it was mitigated in the woman, she being first whipt, and then shut vp in a Monasterie: but by the Canons, other paines are inflicted. Under Adulterie are contained, Incest, Sodomy, Baudery, and all the rest of the sins of that kind. Publicke force, is that which is done by a company of armed men, collected together, and the correction thereof is perpetuall banishment. Priuat, which is done without Arms, the paine thereof is the losse of halfe the parties goods, and the infamie of his name. Murderers and Poysoners, Witches and Sorcerers, the crime being proued, dye the death: such as set mens houses a fire, are to be consumed with fire themselves: such as Kill either Father or Mother, or those that are in the place of Father or Mother, or any that are of next a kin, their punishment is death; and in case of the Father and Mother, beside the paine of death, the Parricide being first well whipt, so that the blood doe follow in good plenty, being solwed vp into a sacke, together with a Dog, a Cock, and an Ape, hee is throwne into the depth of the Sea. Such as make false Cer-

tifi-



tificats, forge false Wills, Depose false wittingly, suborne witnesses, take money either to say, or not to say their knowledge of that which they are demaunded of in Judgement, corrupt Judgement, or cause it to be corrupted, interline, put in, or rase out any thing out of any writing, that the truth thereof may not appeare as it was written, suppress Wills or Testaments, or other like writings, counterfeit other mens hands and Seals, openeth any mans Will yet living, and imparteth the secrets thereof to the parties aduersarie, unsealeth such instruments or writings as are left with him to keepe, bequeath vnto themselves Legacies in an other mans Will without his good will and prauie, wash or clip gold or sowder therein any corrupt mettals, make base siluer money, pretend themselves to bee Noble men or Gentlemen, whereas otherwise they are but base persons, wilfully challenge vnto themselves another mans name, or Arms, cog and foist in womens labours or otherwise, false births or Adulterous children, in stead of true and rightfull heires, sell one and the same thing to two men, carrie about false Passports, vse false Measures, or corrupt those that are true, in some cases, are punished by death, in other by banishment, imprisonment, or cutting of both or one of the hands of the offender. If any bearing any publike office, abuse the same to gaine, and doth that for money which he ought to do for thanks; the Law ordereth that the offender shall be called to accompt for his supposed bribery, and if he bee found guilty therof, fineth him foure fold double to the partie grieved, and beside, decreeth him to be banished. Such as by il deuises and policies, raise vp the price of coine, and other victuall, or get the whole sale of any marchandise into their hands, that they may sel it the dearer, are punishable at the discretion of the Judge, which according to the qualitie of the person and fact reacheth sometimes to banishment, sometimes to death it selfe. If any take, purloine, or interuert to his owne vse any money dedicated to holy and publicke uses, or cause the same to be taken, purloyned or interuerted, or if any take away any brasen table, wherein any publicke Lawes are

grauen, or the bounds of any Lands are described, or blot out or change any thing therof, or couenously pay in lesse money into the Exchequer, then by right he ought to haue done, and hath not cleared with the Exchequer for the residue, is to be condemned in the thre double of that which is the residue, and is beside to be banished.

If any, to get an Office, procure a number of hyred voices, besides the losse of the Office hee sueth for, his punishment is tempozall banishment. If any steale away any child, the bodie of any freeman, and sell the same away, or detainē them against their will, the fault is death. If any slanderously charge another with any false crime, or wittingly beare any false witnesse against him, or willingly giue any wrong Sentence against him, or on the contrarie side, dissembleth such faults as hee knoweth, and colludeth with the aduersarie, or giueth ouer the prosecution of a crime, hee hath undertaken to follow, vntill hee haue leaue graunted him by the Iudge, to desist from his accusation, the same is to be punished with the like kind of punishment that hee would haue the other punished by, vnlesse hee bee acquitted therfro by the Princes Pardon, or that the Aduersaris bee dead. In publike Judgements where the Offender appears not, Proces is to be awarded out against gainst him for his apparance, by a certaine day to clere himselfe, at which day, if hee appeare not, an Inuentory is taken of his goods, not to the intent they should be spent but that they should be reserued to his vse, if he returne againe within a yeare, and clere himselfe; otherwise they become the Exchequers for euer, how innocent soeuer the partie afterwards appears to bee. If the Offender be present in Judgement, and deny the fact, he is to be confuted by witnesse, or other pzoofe, or if there be iust matter of suspicion, to be put on the racke; which, albeit in matters of lesse daunger, it is great crueltie, yet in great and horrible crimes it is necessarie: If the Offender haue either confessed the crime, or be conuicted thereof, then it followeth  
that



that the partie conuicted, be punished either by death or otherwise, according to the qualitie of the person, or condition of the offence. Punishments by death are foure, Hanging, Burning, Heading, and Casting the Offender to be deuoured by wild beastes, amongst which may be reckoned, Crile or Banishment, for that it takes away a mans libertie, and bereaues him of his country, which to euery good subiect, is as deare vnto him as his life it selfe.

Punishments which did not inflict death, were many, and such as it pleased the Magistat in his discretion to appoint. The Law hauing passed vpon the Offender in such sort, as he hath lost his life, libertie, or countrie, his goods became forthwith forfeited to the Prince, such (I meane) as are of value: but for the other, the Law alloweth them the prisoner, for his maintenance during the time of his imprisonment, and satisfying such fees as are due to the Officers thereof; which hath place where the offender hath no children, otherwise the one halfe of his goods cometh to his children, vnlesse it be in case of Treason where all is confiscated. They are also held for conuict and guilty, which either vpon a guiltinesse of minde make away themselves before Iudgement, or stop their Aduersaries with a bribe, that they shall not follow the Law against them, and their goods are no lesse confiscat then the others. But it is otherwise in those which are banished for a time, or to a certaine place, or in such as the Law hauing once passed vpon them, are either in their life or after their death, by the bountie and mercie of the Prince restored; in which case they recouer Goods, Name, and Honour: the body being executed the carcasse for the most part is graunted to buriall, vnlesse it be for matter of Treason or other such like offence. If any haue bin vniustly condemned, either by the iniquitie or vnskilfulnesse of the Judge, the law alloweth him an appeal, that is a prouocation to a higher Judge, that he may hear the cause anew, & reforme that which is Iudged amisse into better: and if the higher Judge find the partie grieved, hath well appealed, he is to reuerse the former sentence, otherwise to send

send the Offender back to the Judge from whence he came, there to receiue his punishment: yet some persons there be from whom no appeale lieth, as from the Prince, or Senat, because they represent the Prince; neither may hee appeale which hath renounced his appeale. Appeales are made from lower Judges to higher, and from him that is Delegated to him that did Delegate: Appeales are to be made within ten daies after Sentence giuen, or within ten daies after the Notice is come to the partie, against whom the Sentence did passe, vlesse there attend thereon a continuall grieffe, in which case, a man may appeale so long as the grieffe indures: the time to alke Dunsillorie Letters, is thirtie daies from the Sentence giuen; the time to present the same to the Judge, is at the discretion of the Judge from whom; the time of prosecuting the same is a yeare, or vpon iust cause two yeares, in which time, if the sute bee not ended, the cause is deserted, and to be sent back into the Judge from whom the Appeale was first made: while the Appeale hangeth, nothing is to be innouated, because by the Appeale the Judges hands are, as it were, bound: but if the former Sentence were void by law, as in sundry cases they are, then there needeth no Appeale; for such Sentences neuer passe into a case Judged. Appeales in criminall cases cannot be iustified by a Proctor; but it is otherwise in Ciuile causes. An Appeale in one cause doth not exempt the partie appellant from his own Judge in other causes: If the appellant die, during the time of the Appeale, and leaue no heire behind him, the Appeale ceaseth, but if he leaue an heir behind him, & the matter of the Appeale concernes none but himselfe, he is not to be compelled to follow it, for euerie one may renounce his owne suite: but if it concerne the Erchequer, or any other bodie, then may hee be compelled to follow it. The Erchequer is the Princes Treasure, and the patrimonie of the common wealth, and hath many & singuler prerogatiues, which priuat men haue not. Such as are taken captiue by the enemy, become their seruants, who haue taken them, vlesse eyther they escape home againe themselves, or be ransomed by their friends,



friendes, in both which cases they recouer all right and pri-  
 uiledges they had in their owne common wealth befoze. By  
 the Law all Subiects whatsoeuer are bound to serue the  
 common wealth in warre, inso much that if any being prest  
 withdrow himselfe, or his child from it, he is to be counted  
 as a rebell, and for his punishment is to be banished, and  
 mulcted or fined in the greatest part of his goods. As the pri-  
 uiledges and rewards of Souldiours were many to incourage  
 them to vertue and manhood; so their shames and punish-  
 ments were great, to feare them from cowardice and vice:  
 But among the rest of the priuiledges of Souldiours, the old  
 Souldiours were the greatest. Of Subiects, some dwelt in  
 Shires, and liued after their owne Lawes, and yet neuer-  
 thelesse were made partakers of the honours of the Citie:  
 some other were inhabitants onely in the common wealth,  
 and had onely a house in the same place to dwell in, and had  
 no right to beare office: some other were straungers brought  
 in, which were ruled by the Law of them among whom they  
 dwelt. Amongst those that dwelt in Shires, the chiefest Ma-  
 gistrate was he whom they called Decurio, who was not  
 sent by the people of Rome thither (for he was a Magistrate  
 of Magistrates) but elected by the people there; and his of-  
 fice was, to keepe the treasure of the Countrey, to prouide  
 victuall, exact tribute, and gouerne the state there, in maner  
 as our Shirifes doe here: His office was onely annuall, least  
 by libertie, and lust of gouernment and continuance thereof  
 it might grow into a tyrannie. Such as are Subiects, are to  
 serue the common wealth in such offices, places, and serui-  
 ces, as their abilitie is fit for, and the necessitie of the com-  
 mon wealth requires. The seruices of the Common wealth  
 were of three sorts; Patrimoniall, such as belong to euery  
 mans patrimony to performe, which stood chiefly vpon pay-  
 ments and charges, which were to go out of euery mans in-  
 heritance towards the performance of such burthen as lay  
 vpon him by law, custome, or commaund of him that had  
 power thereto: Personall, which were to be performed by  
 the care and industrie of the partie and his corpe, all labour,  
 without

without expence of his purse. **W**irt, which required both care of the mind, and labour of the bodie, and expence of the purse, and are imposed aswell in consideration of the thing, as the person, which euery subiect is to vndergo, vnlasse by the Law, or by the indulgence of the Prince they are excused; as some are excused by reason of olde age, some by yong age, some for their dignitie, some for their calling, some for their state of bodie, some for that they serue in the necessarie seruices of the Common wealth at home, or abroad, as Ambassadors doe, some for that they are necessary places of seruices for Gods Religion, as cathedrall Churches, & other Churches are, some for that they are good and necessarie places for Seminaries for the Common wealth, for learning and such other imployments, as Colledges, Societies, and Schooles of learnings and nurture are. Legates and Ambassadors had immunitie from all publike seruices, not only the time of their embassage, but also two yeare after their returne; They were called Legates, in that they were chosen as fit men, out of many; their person was sacred both at home and abroad, so that no man might lay violent hands on them without breach of the Law of Nations. Such as are Magistrats of cities ought so to gouerne, that no negligence may be iustly imputed vnto them, otherwise they are to answer it, and that when their office is expyred, they giue vp a iust accompt, both of what they haue receiued, & what they haue laied out, & pay in the residue, if there be any. Gouernors of Cities, together with the consent of the Burgeses therof, may set downe such orders and decrees, as are for the benefit & well ordering thereof, which are to be obserued of all those which are Inhabitants therof, and being once wel and duely set downe, are not to be reuersed, but to the good of the Citie or Comminalty. New publike works, such as are good for the Common weale euery one may make without the leaue of the Prince, vnlasse it be done for emulation, or cause of discorde; but for old works, in which stands the securitie of the Common wealth, as Castles, towers, gates, and wals of Cities, nothing is to be done or innouated in them without the



the Princes warrant, neyther is it lawfull for any man to graue his name in any publike work, vnles it be his at whose cost the work is done. Faires are authorized by Princes onely & are inuented for trade of marchandise, & uttering of wares, which Countrymen haue cause to buy, or sell: and haue their priuileges, that no man in any faire can be arrested for any priuat debt; they are called Nundine therupon, that euery ninth day they were holden, either in one place or other: We that for x. yeares space intermitteth to vse his fayre, loseth the priuledge therof. If any make any promise to a Citie or Common wealth to do any thing vpon certain cause, as that he might be made Consul, or that he would repaire some part of the Citie that was burnt, he shall by the Law be compelled to performe his promise: for it is not meet that such promises should be satisfied with repentance. Such as professe liberall Sciences in any Common wealth, whereby youth is instructed, & brought vp to knowledge, or be Scholmasters, or professors of Physick, or be Midwives, Potaries, Auditors, or Casters of accompts, or Registers, the Law alloweth not only a competent stipend in recompence of their skil & paines, but also affordes them meanes how the same may be recouered, if it be denied. But as for Philosophers & Lawyers, the Law hath appointed them no stipend, not because they are not reuerend Sciences, & worthy of reward or stipend, but because either of them are most honozable professions, whose worthines is not to be valued or dishonored by money: yet in these cases many things are honestly taken, which are not honestly asked; and the Judge may according to the qualitie of the cause, and the skill of the Aduocate, the custome of the Court, and the worth of the matter that is in hand, appoint them a fee answerable to their place, as also to such as are Interpreters betweene parties in matters of traffique, when one vnderstands not an others language.

The second Tome of the Law is the Code, & stands in xij. Bookes, whereof eight for the Titles follow in a maner the order of the Digest, a few titles only excepted, which are added, besides those of the Digest, but as for the 4. other, which

are the first, the tenth, the 11. & the 12. although the subiect they treat of be named in the Digest, yet the things which are there named are not handled in the Digest, and therefore will I passe ouer those 8. other, lest happily I might seeme to do one thing twice, & therefore will I refer the Reader ouer to that which hath bin said of them befoze in the handling of the Digest; for they are almost twinnes of one mother, so that whosoever knowes the one, shall with no great difficulty discern the other, & come to the other sower, yet not mentioned there: But yet befoze I lay open the matter therof, I wil in a word or two shew why this volume of the Law is called the Code, who is the authoꝛ thereof, & out of whom it was collected, what moued the authoꝛ after so many learned titles set downe befoze, of such things as are in the Digest deduced, by such a number of worthy Lawyers (as the lawes of the Digest themselues doe by their inscriptions shew, for euery law carrieth with him in his forehead the name of his Authoꝛ) to make a new flourish of the same, & what the knowledge of the Code odth confer vnto a Student or practiser of the Law more than the knowledge of the Digest doth.

The Code therefore is named of the word Caudex, that is the trunk or timber of the tree from which the barke of the tree is pild or puld off, of which men aunciently vsed to make writing tables, artificially binding them vp into the forme of a booke, and vsing them for bookes, befoze the vse of paper or parchment was knowen, insomuch as many of these tables being bound together, they were called a Code, or booke: besides whereas the auncient Lawyers befoze Iustinianus time, vsed to write their pleas and answeres in scroules of paper or parchment, Iustinian himselfe first put them in a booke, and therefore termed them by the name of a Code.

The Code it selfe is compiled of the answeres of 56. Emperors, and their wise Councell, whereof sundry were learned & skilfull Lawyers, as the storie of that time doth shew, and the Lawes themselues do name some of them, as that most excellent and famous man Papinian, and some others; that



that is from the dayes of Adrian the Emperoꝝ, vnto the age of Iustinian himselfe.

The cause that moued Iustinian hereto was, that in the Digest he found not euery case decided that falls out in common vse of life (foꝝ how is it possible when as euery moment there falls out new matter, foꝝ which former Lawes made no provision:) and therefore thought good to supplie that by new Lawes, which he found defectiue in the old: so that the multiplication of those titles grew not, that the Emperoꝝ had any meaning to fill the world with multitude of Lawes, foꝝ he had found the inconuenience thereof already, and therefore had repealed and abolished so many thousand of olde Lawes, as he had; but it came rather of that, that the multitude of causes were so many, that euery day there fell out some vnerpected thing that was neuer heard of before: beside notwithstanding the carefulnesse of the Emperoꝝ himselfe, and his great Lawyer Treboman, and others, whom he vsed foꝝ the selecting & chosing out of the purest, best, and most agreeing Lawes among themselues, out of that indigested heap of Lawes, he then abolished; yet they were not so quicke sighted, but in that great worke sundꝝ antinomies oꝝ contrarie Lawes past them, which had need to be expounded and amended, and the Authoꝝs to be recited. Further sundꝝ of ancient Lawes were so subtilly wꝛitten, that there was moze wit then profit in them, so that it was expedient the Emperoꝝ should explane the same, and putting all subtilty a side, giue a right sence vnto the Law. Lastly whereas many things were deliuered by them briefly, and therefore obscurely, the Law-giuer in his princely wisdom, set out the same in other Lawes moze plentifull and distinctly, all which were the chiefeest causes why the Emperoꝝ set out the booke of the Code.

The Code neither in style neither in methode commeth to the perfection of the Digest, as that which foꝝ the style is a barbarous Thracian phrase Latinized, such as neuer any meane Latinist spake, whereas notwithstanding the style of the Digest is verie graue and pure, & such as doth not much

differ from the eloquent<sup>s</sup> speech that euer the Romanes vsed, and for the Methode, it hath no particuler disposition, other then such as is borrowed of the Digest it selfe, & otherwise is rude and vnskillfull, where it doth recede from the same: yet doth it not lack his good vse, for to such as follow the practise of the law, the knowledge of the Code is much more expedient then the knowledge of the Digest is, for that the lawes of the Code doe determine matter in daily vse of life; which, when they are like in all ages ( for the same is euer more vpon the stage, the persons a litle altered ) it cannot be but the learning thereof is very profitable and expedient for the Common wealth, whereas notwithstanding the learning of the Digest stands rather in discussing of subtill questions of the Law, & enumerations of the variety of opinions of ancient Lawyers thereupon, which haue more commendation of wit, than benefit toward the common wealth in them; but hereof hetherto.

The first Booke of the Code treateth of Religion, and the Rites & Ceremonies thereto belonging, whereof I said there was no special Tractat in the Digest, sauing that it deuidenth the publike right into that which concernes the Church, and Church men, & the Magistrates of the Common wealth, prosecuting the latter branch thereof only, & omitting the first, because out of that heathenish Religion which was vsed in those ancient Lawyers daies, and those superstitious Rites, whereof their Bookes were full, nothing could be taken that might serue for our Religion: wherupon he instituted a new discourse thereof in the Code, beginning first with the blessed Trinitie, one in essence, and three in person, wherein he sets downe a briebe summe of our Christian faith, agreeable to the doctrine of the Prophets, & Apostles, and the sower first generall Counsels, the Nicene, Constantinopolitan, Ephesine, and Calcedon, forbidding any man publikely to dispute, or strine thereabout, taking occasion vpon the Nestorian Heresie, which not long befoze had sprung vp, and had mightily infected the Church, which Iustinian by this confession of Fayth so published to the whole world, and penall Edict ioyned



ioyned thereunto, hoped to repressse: After he hath set downe a full and sound confession of the Christian faith, comfortable to the Primitive Church, next he addeth a title of the holie Church it selfe, and of her priuiledges, which either concerne Ecclesiasticall mens persons themselues, or their state, and substance, or the actions one Ecclesiasticall man had against an other, or with or against Lay persons: where also he prosecuteth the degrees of Priests, or Ministers, their offices, orders, and how the same are to be come by, (that is without bribes or Simonie, or other worldly respect saue the worth of the person onely) and the rights of holie places. Priests are so called, because they were consecrated, and as it were seuered from the rest of the people, and giuen vp to God: which also were called Elders, eyther because they were so in age, or ought to be in such manners, and carefull carriage of themselues. Amongest Priests, or Ministers, Bishops haue the first place, who are as it were the Ouerseers and Superintendents of the rest, so called of their watchfulnesse, care, labour, and faithfulness in teaching the people, and doing other dueties, which they owe vnto the Church. The lowest degree of men among the Ecclesiasticall hierarchy were the Clarkes, so called of their lot by which they were chosen and allotted to Gods seruice. To Bishops Priests, and other of that rank, did appertaine the care of Hospitals, whereof some were for Orphans, some for Infants, some for Impotent and diseased persons, some for Poore people, some for Strangers, & other like miserable persons, & therefore together with the title of Bishops & Clarkes is ioyned the title of Hospitals, or Almshouses. In place next after the Bishops themselues, comes their power & audience; for albeit the chiefest office of a Bishop is to instruct the people in the doctrine of the word, & in good example of life: yet soasmuch as all will not be obedient vnto the word, neither brought by the perswasion thereof to good nurture, & to be kept in order, & the eminency of the degree, wherein the Bishops are placed, is not sufficient to keepe the people in obedience without some power & iurisdiction, and because  
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the Church it selfe is the mother and maintainer of Justice, therefore there is by the Emperoꝝ himselfe, and his predecessoꝝ, as many as professed Christianitie, certaine peculiar iurisdiccions Ecclesiasticall, assigned to the Bishops, moze woꝛthy then the Ciuill, ouer persons and causes Ecclesiasticall, such as touch the Soule and Conscience, oꝛ do appertaine to any charitable oꝛ godlie vses: and ouer the Laitie so far foꝛth as eyther the Laitie themselues haue bin content to submit themselues vnto their gouernment, that is so far, as eyther it concernes their Soules health, oꝛ the outward gouernment of the Church in things decent oꝛ comly, oꝛ that it concernes poꝛe and miserable persons, such as widowes, oꝛphans, captiues, and such other like helpelesse people are, oꝛ where the Ciuile Magistrates cannot be come by, oꝛ both voluntarily delay iudgement; in all which anciently a Bishop was to perfoꝛme double sayth and sanctitie, first of an vncorrupt Iudge, and then of a holy Bishop. But in many of these matters in these dayes, the Laitie will not suffer themselues to be controld, and therefore hath taken away most of these dealings from them, yea, euen in charitable causes. Immediately followeth a title of Heretickes, Maniches, Samaritans, Anabaptists, Apostataes, abusers of the Crosse of Christ, Iewes, and woꝛshippers of the host of heauen, Pagans, and of theyr Temples and Sacrifices; whom the Bishop is not only to confute by learning, but also to suppress by authoritie, foꝛ he hath not the Spirituall sword in vaine. The Heretickes, Iewes, and Pagans shall not haue Christian men and women to be their seruants: that such as flie to the Church foꝛ Sanctuarie, oꝛ claime the ayde thereof, shall not be drawen from thence, vnlesse the offence be haynous, and done of a pretended and purposed malice, in which case no Immunitie is to be allowed them, but wicked people are to be punished accoꝛding to their desert, agreeable to the woꝛd of God it selfe, which would not haue his Altar be a refuge vnto the wicked: And so far of that part of publike right, which appertayneth to the Priestes, oꝛ Ministers, and their



their Function, which was omitted in the Digest, but prosecuted in the Code. Now it followeth, that wyth like breuitie I run ouer the thre last Bookes of the Code, which themselves were rather shadowed in the Digest, in the title of the right of the Erchequer, then in any iust proportion handled.

The first therfore of them setteth out, what is the right of the Erchequer, and in what things it standeth, as in goods excheted, because there is no Heire vnto them, or that they are forfeited by any offence worthy death, or otherwise. How such as are in debt to the Erchequer, and their suerties are to be sued. Of the right of those things which the Erchequer sels by outcry, where he that offereth most carrieth it away, and how the same may be reuoked, vntlesse all rights and ceremonies bee solemnly performed therein. How things that are in Common betwæen the Erchequer and priuat men, may be sold, and that the Erchequer euict nothing that it hath once sold, for that, it were a thing against the dignitie of the Erchequer, & would terrifie priuat men for bargaining with it. Of those that haue borrowed money out of the publicke receipts, and what penaltie they incurre, if they repay it not at their daies covenanted, sometimes the forfeiture of foure double of that they haue borrowed, sometimes danger of life it selfe. That in cases of penalties, the Erchequer be not preferred before such as the Offender was truly indebted vnto, but that they be first serued, and then the Erchequer haue onely that which is left. What vsurie the Erchequer may take, that is for money lent, and not for such sums as grow out of Mults and Penalties. That such sentences that are given against the Erchequer, may be retracted within thre yeare following, although ordinarily all other Sentences are irreuocable after ten daies; neither can be reformed after that time, either by rescript of the Prince, or by pretence of new proofe. Of the goods of such as exchet by reason they haue made no Will, and of the goods of Incorporations, that is, of such as dye without Heires, that they come not to the common

banke of the citie, but that they archet vnto the Prince: Of Promoters, by whose information any goods are confiscate, either by reason of the goods themselves, as that they are adulterine, or that they are prohibited to be exported or imported, or vpon some other like cause, or by reason of the persons that haue offended, and crimes wherein they haue offended; and their punishment, if they giue in any wrong information, or other then such as they are bound vnto, by vertue of their Office: and that they giue no information in, but by aduise of the Attorney of the Exchequer, and that they make no information against their Lord and Master, but in case of Treason: that it shall be lawfull for no man to make suite vnto the Prince for those things that are confiscated vnto the Exchequer, as though it were more Honorable for the Prince to bestow such things on his Courtiers, then to keepe them to himselfe: and therefore, such as are the Princes Secretaries, his Masters of Requests, and others that are of his remembrance, are forbidden to make any Acts, Instruments, or other writings hereof, vntill the Prince of his owne motion, and at no other mans suite, will or commaund the same: Of such as put themselves into the Exchequer, vpon any confession made against themselves: Of such to whom the Prince toyntly hath giuen any farme or like thing, that where one of them dyeth without an heire, the other may succeed him: Of Treasure found, that the Exchequer be made acquainted with it; and that if it bee found in a publicke place, halfe goeth to the Exchequer, the other to the finder: but if it bee in a priuat place, then halfe to the Lord of the soyle, and the other to the finder: Of prouision for Corne and such other like: Of Tribute, which was an ordinarie payment: Of imposition and super-impositions, which were payments laid vpon the subiect aboue ordinarie tax, for some present necessitie, to which charges the ordinarie tax doth not suffice; which was not to bee done, but vpon great and vrgent cause, by a councell called together, and with the consent of the subiect: Of Collectors of the Subsidie, and



in what manner they are to bee collected and brought into the Exchequer, and of the punishment of those that in the collection thereof extort more than is due: that it shall bee lawfull to distraine for Tribute unpaid: that such acquittances as the Exchequer shall deliver vnto the accomptants, shall bee their full and small discharge: and that the Subsidie Bookes shall euery quarter bee sent vp into the Exchequer, with the account of the Collectors, that thereby it may appeare how much euery man hath paid or oweth vnto the Exchequer: and that nothing may bee done for the gricuaunce of the poore, or the fauour of the rich: Of the booke of accounts of pcerely gifts that commonly Subjects present vnto the Prince at New yeares tide and otherwise, and that they bee diuided from the accounts of the Exchequer: That no man bee freed from the payment of Tribute: Of spending out such ancient graine and other like prouision as is laid vp in the common storehouse, and making prouision for a new, and compelling the subiects, such as haue plentie of such graine, if it happen to bee vined and mustie, to buy the same, that the whole losse thereof may not lye vpon the Exchequer: What pension such Mannors as the Prince hath giuen or released from payment of Subsidies shall giue, and that no man bee so hardy to beg such a matter of the Prince lest the reuenues of the Exchequer be thereby diminished: Of Mannors that haue bene translated from the payment of one kind of prouision to another, or that haue bene in their taxation ouer rated: Of Wasse that Minerall Countries are to yeld, or money in lieu thereof: Of Controllers, whose Office it was to cast ouer againe such accompts as were brought into the Exchequer, or to examine them anew, least perhaps, there might bee an errour in them.

And so far as concerning those things which doe appertaine to the accompt of the Exchequer, or the patrimony thereof, or such pensions or payments as are due vnto the same. Now followeth the other part of this tenth Booke,

which containeth the burthens, duties, or offices imposed on the subiect by the Exchequer, and what excuse the subiect might alleage in this behalfe.

Burthens or duties, were either personall, as places of Honour, which were not to be continued from the father to the child; or they be Patrimoniall which are charged vpon mens inheritance, either for the good of the common wealth, or to enrich the Exchequer against dangers that are like to insue: which are vndertake and performed either by those which are of necessitie to obey that which is inioyned them, or by those which offer themselves voluntarily therto, which seldom happeneth in patrimonial charges: but in matters of Honour and Personall seruices, it many times cometh to passe, that men excuse not themselves from bearing of Offices, or doing of Personall seruices, although they haue an immunitie from them, either by the graunt of the Prince, (which is to be vnderstood of extraoꝛdinarie seruice only, and not of oꝛdinarie) or by the benefit of the Law; for by the law men are many times vpon iust causes excused from Personall seruices, so it be not from such seruices as no man can excuse himselfe from; such as are Postings and carriages, when the Prince passeth by, or the Tenure of his Inheritance doe so require it, and the erecting and repairing of Bridges, Waies and Walls, the pꝛouision and carriage of Coꝛne, and other like kindes necessarie for the maintenance of the Princes house. Men are excused either generally from all kinds of seruices, or particularly from some: as all Schollers, specially such as are Students in any famous Vniuersitie, whilest they giue themselves there vnto their booke, are excused from all Personall seruices, but not from Patrimoniall seruices; as also all old men of the age of seauentie yeares and vꝑward, all professors of Liberall Sciences, whereby the common wealth is benefited, all professors of Physick, Grammer, Rhetoricke or Philosophie, so they bee allowed by the Magistrate and seauen skillfull men in the profession which they make shew of, and bee not Supernumerarii, or aboue the number of those that



that are to be allowed, in which number are, neither Poets or Auditors: they are also excused, which upon iust cause are dismissed, either out of the Army or out of the Schooles, either for lack of health, or that they are so wounded, that they can neither serue in war any longer, nor longer indure study, which are so to be understood that they yeeld excuse from Personall Seruices onely and not from Mediall.

Those things that yeeld excuse in part, from Personall seruices are these; the Renting of the Princes custome, the basenes of the persons state, not fit to beare any Office of credit, infamie, banishment, an amotion from a mans place and degree, feminine sex, which are to vndergoe such Offices only, as are agreeable to their sex. Imballages imposed vpon any by the Prince and his Councell, which hath immunitie also of two yeares after their returne, if the Imballage were into places becond the sea, or into any far country, not if it were into any Country nere at hand. Skill in any Manuell Arte or Mysteries, to the intent that they may haue both time to learne their Arts, and so become the Skillfuller in the same, and also haue more alacritie to teach others in their Mysterie. That that care be had, that such are chosen to office, that they be of the worthier sort for their vertue and place, and the richest for their state: that no man be chosen to office for enuie, and if any be, and the same be proued, he that did chuse him thereto is to be fined, and to pay the expences of the suite, vlesse he which is chosen die within short time after the choise, then his successors are not bound thereto. Further, men are excused, if being in one Office, they are chosen vnto another, to the intent they may the better execute and performe that office they haue in hand: Such as are remembzancers, which make Bookes of what is due to the Exchequer, and what is brought in, Auditors, Receiuers, Tellers, Granarers, Weighers, such as weigh & try such gold as is brought and paid into the Exchequer; Collectors, that is, such as gather vp the gold that is due in the Prouinces to the Exchequer, and send the same ouer

into the Exchequer, who are in no case to hold the same longer in their hands than the Law alloweth them, much lesse to turne the same to their owne vse, without great offence to the Prince and common wealth: the like is for Crowne gold, that is, of such gold that is put in Crownes, and offered to the Prince vpon any publicke gratulation, or any exploit that hath bene happily atchieued.

Iustices of Peace, which are distributed by countries, for the more quiet and peaceable gouernment of the same, whose care was to seeke out theues and malefactors, and to foresee that the Country people did make no mutinie, by reason of the Taxes and Subsidies that were leuied vpon them: that for gold, there might bee paid siluer, and againe, siluer for gold into the Exchequer, so that the value thereof were made equall. Usurers, although they haue no possessions, yet they are no lesse bound to all patrimoniall or predial charges, than if themselves had Lands and Hereditaments, although, for their infamie, they are excluded from all personal charges that are of credit.

The Eleuenth Booke proceedeth in the enumeration of other vocations, that are exempted from personall seruices of the common wealth, besides those that haue bin named in the tenth Booke: as masters of ships and Mariners, which serued to bring in any Marchandise or prouision for the Princes household, out of forreine Countries into the Princes storehouse; yea, although they were priuat mens ships, which were imploied to that seruice, so that if a priuat mans ship were laden with any publicke prouision, there could not any other priuat burthen bee imposed vpon him: for that, if the ship perish by shipwrack by reason of the priuat burthen that is put therein aboue the publicke charge, then hee is to answer the losse thereof vnto the Exchequer, otherwise than in the case of priuat men, who are themselves to beare the losse of those things which are exported or imported; neither can they make gaine of priuat mens shipwracke or of those things which are cast out into the sea, to ease the lading of the ship, but are bound to restore it  
to



to the owner, vnder paine of confiscation of their goods by the Tempozall Law, and excommunication of their persons by the Ecclesiasticall Magistrate. Adde to this, Miners or Metallers, and the gouernours of the same; gatherers of Muskels and otherlike shell fish, with whose blond either Purple is made, or out of which Pearles are taken: which colour Princes onely might vse, as also veluet and cloth of gold, neither was it lawfull for any man (vnder the degree of the Prince) to weare the same, sauing onely women in some sort, for that such ornaments are fitter for women than men. Ioyne to these Monetaries, which serued to coyne money, Mainemen or Carmen, which with their owne cattell carried or conueyed things which belonged to the Princes Treasure. The like priuiledge had they which made Armour for the Princes Armozie, as Speares, Breast plates, Darts, and such like; or made Bridles, Girdles studded with pearle or pretious stone vnto the Court, for the Kings household, who onely were allowed to weare the same. Such as had the care and gouernment of any Corporations, as the Princes Bakers, Wintners, Paper-sellers, Money-changers, professors of Liberall Sciences, specially in Rome, and Constantinople, which after the seate of the Empire was translated thither, had all the priuiledges of old Rome, sauing the Ecclesiasticall primacie, for which notwithstanding there was long dissention betwene the two cities.

Next after Rome and Constantinople, Beritus the chiefe Citie of Syria, had great priuiledges, for the famous Uniuersitie which was in the same, and such Prouinces or Countries as serued the same, or any of them with yearely prouision of Corne, Oyle, Beefe, Mutton, Pork, and such other like vittuall: which prouision was to bee distributed among the poore and impotent of the Cities, and not to bee giuen to stout and valiant beggers, which are able to get their living with their  
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owne handes, and therefore were to bee compelled to  
 worke. The Aldermen or Gouernours of Cities, for  
 that they are imployed in matters of greater seruices: yet  
 none of them were to be called to any office before he had bin  
 euen with the common wealth, if happily any of them were  
 in debt to it; neither were they or any of them excused more  
 than from personal seruices, but in predial ducties, they paid  
 euery one according to his rate. But as for Enterlud-plaiers  
 and houses of baudery, they had no exemption at all, but  
 paid double charges to the rest. Of Husbandmen, some are  
 seruants, as Copiholders, others are free, as Freeholders,  
 which notwithstanding themselves are, as it were, bound  
 vnto the soyle, and are rated in the Subsidie according to  
 their Acres, and if they haue no Land, then according to the  
 head or number of their household; which notwithstanding,  
 at this day is taken away, and these, as well pay rent to the  
 owners of the ground (wherein notwithstanding, the Land-  
 lord cannot exact of them, or charge them aboue that which  
 hath bin couenanted betwene them) as Tribute, and Head-  
 silver to the common wealth: for the declining of which, and  
 auoiding of necessarie seruices of the common wealth, as no  
 man can put himselfe vnder the patronage of any Noble  
 man, so also they cannot bee called from this seruice of the  
 common wealth, to any other. Country men, such as were  
 addicted to the ground they tilled, although the ground were  
 their owne, yet could they not sell it to any man, but to him  
 that was of the mother village wherein himselfe was. A  
 Mother village, was that whence all the villages round a-  
 bout were deriued. Although all such husbandmen as dwell  
 in any village, are to pay Subsidie for such goods as they pos-  
 sesse, or such Lands as they hold; yet one neighbour is not to  
 be disquieted or arrested for another mans due: for that it is  
 a thing vnlawfull to trouble one for another, or not to cesse  
 men indifferently, according to the value of their Lands,  
 and the worth of their goods. And therefore the Romanes  
 in rating of matters of taxes, had first Cessers which rated  
 men



men according to that which they thought their state to be: then had they Leuellers or Surueyors, which considered the rate set downe, mended it, and made it even, easing such persons or grounds as were ouer-rated, and charging more deeply such others as were ouerlightly taxed, procuring such grounds as were wast and barren, should be brought to tyllage, and that the barren should be ioyned with the fruitfull, that by such meanes the Prince might receiue subsidy out of both: March grounds & such as lie in the bounds of any kingdome, serue for the maintenance of such garrisons as are there placed for the defence of the Marches, and such as hold the said lands, are to pay an yeerely prouision or pension for the same; as also the Princes pastures, woodes, and forrests, which are let out vpon a certaine yeerely rent, eyther for a certaine time, or in fee farme for euer, which in respect they pay an ordinary payment to the Prince, eyther in money, or in prouision, are discharged from all other ordinary & extraordinary burthens. Publike things are those which appertaine to the Erchequer, or to the Church, which may in like sort be rented out for a season, or for euer, as the possession of the Erchequer may, so it be done to the certaine benefit of the Church, and vnder such solemnities, as in this case are required, otherwise it cannot be let out but for 30. yeares, or for thre liues. Fee farme is when lands and tenements, or other hereditaments, are let out for euer vnder a certaine yeerely rent, in reknowledgement of the soueraignty thereof, belonging still to the first Lord whereby both the right and possession passeth to the farmer in fee.

The third and last of these Bookes, treateth of the honours that the Erchequer giueth; of which the first and chiefest was the Pretorship, which anciently was a great dignitie, but after became an idle name only, & a burthen to the Senators, as in which at their owne charges they were to set out playes and shewes, and gaue vnto the Emperour in consideration of his or their glebe land, a certaine quantitie of gold called Aurum glebale, or if they had no glebe land, then offered they to the Emperour an other piere of gold, called

**Follis aurea**, both which afterward were taken away. Next was the Consulship, which was not to be sought by ambition, or by scattering money among the people, but by cleere suffrages and desert: After the Consulship came in place the Constable, or Master of the Soldiours, and those which were called Patricij, for that their fathers had bin Senators, whose place vnder Augustus was equall to the Consuls, although they were in no office and function of the Common wealth; & the other is not so much an administration as a dignitie, as the Senatorship aunciently was, into the which who that were admitted, were accompted as Parents to the Prince, and Fathers to their Countrey: Fourthly in place, were the Princes Chamberlaines, who were adorneed with sundry priuiledges, and had the title of honoz: Fiftly, followed the Treasurer, who was Master of all the receits and treasure of the Prince, publike or priuat, & of all such officers as were vnderneath him: Then the Prenotarie, chiefe notarie or scribe of the Court, who for that he had the preheminance, aboue all the Gentlemen of the papers, whom we now call Secretaries, was called Primicerius, of the Greek word

which signifieth ware, which is interpreted a wared Table, in which aunciently they did write. After him that was first secretary, there was an other called second Secretary, and so after other Clerks of the Counsell, who were not all in one degree, but some were first, some were second, and so in order as their person, place, and time did require:ouer which was the Master of the Kols, who now is called Chauncelloz, and such as are of the Princes priuie Counsell, or assessors of his priuie consistory, wherein he heareth ambassages, and debateth of the greatestt affaires of the state, and other waightie matters. The President or Tribune of the Scholes, where young men were trayned vp to feates of armes. The Martials or Presidents of Militarie affaires: the Physicians of the Princes bodie, Constantine in olde time honozed with the title of Carles, as he did the rest of his chiefe officers, but now they are without the dignitie of that title: The Carles of the Countries who gouerned



gouerned the prouinces or shires wherof they were Carles: Professors of Law & other sciences twentie yeares together deserued by the law to be made Cles. The Porters of the Court, and the Princes watch, which watched nightly for the defence of his body, the gard or protectors of the Princes body, & their Captaine, among which were chiefe the Standard bearers, as in whom the Prince reposed most trust, and vsed them chiefly in all matters of danger. Next vnto the Chauncello, or Master of the Rol's, were the Clerks, and others that serued in the Rolles, in which the decrees and rescripts of the Prince, the Supplications of the subiect, & the orders therupon set down are recorded, laid vp, & kept, as the rols of Remembrances, of Epistles, libels, ordinances, gifts giuen by the Prince, and such like: besides such as serue the Prince, not in matters of learning, or war, or the pen, or other like places aboue named, but in actions of the common wealth, and in publicke offices eyther of peace or war, and their Presidents or gouernors, among whom are Postmasters, to whom the care of the publicke course doth appertain, the Tresurer of the chamber, who hath the keeping of the priue purse, and such things as come to the Prince by the way of gift, The Master of the horse, his Queries and riders, the yeoman of the Styrp and the Princes footemen, The Castilians or officers of the household, which were part of the Princes family, appointed for the inward seruices of the Prince in the Court, as his tasters, butlers, Wapters, chamberers, and such other, and their gouernors, Harbingers, which vpon remoue prouide for the Princes lodgings; all which had sundry priuiledges and immunities, for that they were all accompted as souldiours, as also the eleuen Scholes for Benchmen, wherein sundry yowthes, vnder masters appointed for that purpose were trained vp, some in learning, some other in Militarie discipline, that they might be made fit for the seruice of the Prince, and Common wealth, and had for their better education an annuall allowance of the Prince, and from thence when they were sufficientlie instructed, or trayned vp, wece sent

out to such seruices as they were fit for.

Of such as were attendants about the Prince, and were imployed in his seruice, the chiefest of all were the Senators, and therefore are called in the Law, the Companions of the Prince, and haue all the priuiledges that Souldiours haue: The second order was of them that were Knight riders, which eyther did, or might serue in warre: In the third rank were such as were in dignitie. All may be compelled to serue in warre, which haue neither iust excuse, nor exemption, nor haue any leaue of the Captaine to be absent, vnlesse they be Merchant men, or be indebted vnto the Common wealth, or obnoxious to the Law, for any crime they haue committed.

Under the title of Militarie discipline is declared, how men are to be trayned vp to the knowledge of warre, what oath is to be taken of such as are prest to be Souldiours, how they are to be distributed into bands, what vse or benefit the Common wealth hath by them, what is their office, and how they are to be mustered, or else translated from one degree to an other, how they are to be iudged, if they offend, what priuiledges belong vnto them, what stipend or wages is due vnto them; as allowance of Cozne, and the baking of the same, into bisket, which was a kind of bread, twice baked for the better durance of it, and the carriage thereof from place to place, so often as they hapned to remoue, their liuerie or apparell, and the times of the deliuerie of the same, or money in stead thereof, lodging and prouision of salted meat the longer to indure: how long souldiours may be absent from the campe, and who is to giue them leaue of absence, and what is the punishment of them that without iust cause be longer absent from the Army then they haue leaue; of yong souldiours, and of their trayning vp, of old souldiours, and of their priuiledges: Prouision for keeping safe the Sea coast, and ordinary high wayes of the Countrie, that such as iourney may passe free without hurt or damage: of runnagates out of the Armie, and such as conceal them, and of eyther of their punishments: of the sonnes of such officers as haue died in the warre, and of their preferment, if any be fit for it, that they



they succēd in their fathers office, or come: Of the Sergeant Maioꝝ, the Clarke of the band, and other such officers of the Campe, and of their office, reward, and punishment: of places disposed of, for publik postes, & cariages in high beaten wayes, and other by-wayes on necessitie, and how the same and the Cattle are to be vsed, that is, that they be not driuen forward with stauces or clubs, but with whips only: and that no post horse, or carriage be taken, but for publike vse of post letters; to whom they are to be graunted, and for what time: Of the Apparitoꝝ, Sergeants, Sumners, or Waylifes: of sundry great officers, and of their Scribes, and Registers, and of their trials: Of the fees of Aduocates, & of the extortion of Apparitoꝝ. And this is the summe of those things which are specially contained in the Code, beside other things which it hath, common with the Digest; the knowledge whereof at this day, is not so necessary for the Ciuitian, who in this age hath little vse thereof, as it is expedient for Counsellors of State, and such as are called to place in court, who may thereout marke many things to direct them in their place, as the varietie of those things which are herein handled both verie well shew.

The third Volume of the Law is called the Authentikes, of the Greēk word *αὐθεντικὴν*, eyther because they haue authoritie in themselves, as proceeding from the Emperors owne mouth, or that they are originals to other writings, that are transcribed out of them.

The Authentikes therefore are a volume of new Constitutions, set out by Iustinian the Emperoz, after the Code, and brought into the bodie of the Law vnder one Worke.

In the Authentikes, is not that order obserued in the disposition of the Lawes, is eyther in the Digest, or the Code, but as occasion was offered of any doubt, wherein the Princes resolution was necessarie to euery thing, so it is set downe without any other Methode or forme.

The whole Volume is deuided into 9. Collations, Constitutions, or Sections, and they againe into 168. Nouels, which also are distributed into certaine Chapters.

They were called *Pouels*, because they were new *Lawes*, compared to the *Lawes* of the *Digest*, or the *Code*.

Of these *Constitutions*, some were generall, and did concerne all, who had like cause of doubt; some other were priuat, and did concerne only the place or persons, they were writ for, which I will ouerpasse with silence.

Of the generall, the first title and first *Pouell* of the first collation is, that *Heires*, *Feoffees*, *executors*, *administrators*, and their *successors*, shall fulfill the will of the deceased, and within one yeare after his decease, shall pay his *Legacies* and bequestes: and if they be once sued for it, they shall forthwith pay that which is due vpon the *Will* (deducting only a fourth part, which is due vnto the heire by the *Law Falcidia*) or else to lose such bequestes as themselves haue in the *Will*.

That it shall not be lawfull for *Widowes* comming to second maryages, after their first husband is dead, to sequester one of their children from the rest, vpon whom they will bestow such things, as her first husband gaue her before maryage, but that the benefit thereof shall be common to them all: Neyther that shee conuey it ouer to her second husband, or his children, and so defraud her first husbands children. And that a man in like sort suruyuing his wife, shall doe the like toward his first wiues children, as concerning such *Dowry* as the first wife brought to her husband.

Of *Suerties* and *Warranties*, that the *Creditors* shall first sue their *Debtors*, and take execution against their goods, and finding them not payable, shall then take their remedie against the *Suerties*.

Of *Monkes*, that they buylo no *Monasteries*, but with the leaue of the *Bishop*, who is there with prayer to lay the first stone: And that the *Bishop* shall appoint such an *Abbot* ouer the *Monkes*, as in vertue, and in merit excels the rest: And besides of their habit, conuersation, professions, and change of life, and who is to succeed them in their goods and  
inhe-



inheritance.

Of Bishops and Clerks, that is, that Bishops and Clerks be of good fame, of competent learning, and age, and that they be ordeyned and promoted without Symonie, or bryberie, or the iniurie of the present Incumbent: And that there be a set number of Clerkes in euery Church, least the Church and Parishioners thereby be ouer charged.

The second Collation treateth of the Churches State, that the lands of the Church be neyther sold, aliened, nor changed away, but vpon necessitie, or that they be let to farme for a tyme, or vpon other iust cause, no not with the Prince himselfe, vntlesse the change be as good, or better, than that which he receyueth from the Church: and if any man presume contrarie to this forme, to change with the Church, hee shall lose both the thing hee changed, and the thing he would haue changed for it, and both of them shall remayne in the right of the Church: And that no man geue or change a barren peece of the ground with the Church.

That Judges and Rulers of Prouinces be made without gifts: of their office, power, authoritie, and stipend, and that they sweare, they shall so sincerely and vprightly execute their office, as knowing they shall giue an accompt thereof to God and the King: which oath they shall vndergo before the Bishop of the place, and the chiefe men of that Prouince, whether they are sent to be Judges or Gouernors.

Of the Masters of Requests, and their office, which offer to the Prince suers Petitions, and report them back from the Prince vnto the Judges.

Of wicked and incestuous Marriages, and that such as marrie within those degrees, forfeit all that they haue vnto the Erchequer, for that when they might make lawfull Marriages, they rather chioic to make vnlawfull Marriages.

The third Collation contayneth matter against Baldres,  
that

that they be not suffered in any place of the Romane Empire, that being once warned to forbear their wicked profession, if they offend therein againe, they die the death therefore. If any man let any house to a bawd, knowing him to be a bawd, that he shall forfait x. li. to the Prince, and his house shall be in danger to be confiscated.

Of Maiors and Gouvernors of Cities, that such be chosen that be honest people, and men of credit, and that no man of the Citie being thereto chosen, refuse the same, and that such as are thereto chosen, shall swear they will proceed in every matter, according to Law and conscience.

That there be a certaine number of Clerkes in every Church, and that it be neyther diminished, nor increased, and therefore that there be a translation of those that abound in one Church, into an other Church that wanteth.

The precepts which Princes gaue to Rulers of Prouinces, were these in effect: that whereas themselves were freely chosen thereunto, they should in due sort and order go into their Prouinces, that they should keepe their hands pure from bribes, that they should carefully looke vnto the Reuenues of the Exchequer, and the peace and quiet estate of the Prouince, repress outrages and rebellions, procure that causes be ended with all indifferency, and ordinary charges: to foresce that neyther themselves, nor any of their officers, or vnderministers, doe iniurie to the people, least those that should help them, doe hurt them: To prouide that the people want not necessarie sustenance, and keepe the walls of the Citie in reparation: that they punish offences according to the Law, without respect to any mans priuiledge, neyther admit any excuse in the examining or correcting of the same, saue innocency only: that they keepe their Officers in order: that they admit to their Counsell such as are good men, and are milde towards such as are good, and sharpe towards such as are euill: that they affoord not Protections to euery man, neyther to any one longer than it is fit and conuenient it should be: That where they remoue, they ber not the Countrey men with moze carrpages then is needfull: that they



they suffer Churches and other like holy places, to be a Sanctuarie to murtherers, and other such like wicked men: that they suffer not Lands to be sold without fine made to the Exchequer: that they regard not Letters or rescripts contrarie to Law, & against the weale publicke, vnlesse they be seconded: That they suffer not the Province to be disquieted vnder pretence of Religion, heresie, or schisme, but if there bee any Canonically or ordinarie thing to be done, they advise thereabout with the Bishop: that they do not confiscat the goods of such as are condemned: that they patronize no man vniustly: that no man set his Armes or Cognusance vpon another mans Lands: neither that any carrie any weapon, vnlesse he be a Souldier.

What is an hereditarie poztion, and how children are to succeed: of such as deny their owne hand writing, and how they are to be punished, as well in personall as in reall actions; and that such deniers after their deniall be not admitted to other exceptions: and the taking away the thing in controuersie from him, which denied the true owner to be Lord thereof.

The fourth Collation, handleth matters of Marriage, and that marriage is made only by consent, without either lying together, or instruments of dowrie: Of women that marry againe within the yeare of mourning, which by Law in sundry sorts was punished for confusion of their issue: that there be an equal proportion in the Dowrie, and the Fornture: Of Diuorce and separation of marriages, and for what causes, by consent, for impotencie, for adulterie: and that Noble women, which after the death of their first husband, being noble personages, marrie to inferiour men, shall lose the dignitie of their first husband, and follow the condition of their second husband.

Of Appeales, and within what time a man may appeale, and from whom, and to whom the appeale is to be made.

That none which lends money to an husband man, take his land to morgage, and how much vsury money a man may take of an husbandman.

Of her that was brought to bed the eleuenth moneth, after her husbands decease, and that such as are bozne in the beginning of the same moneth, are to be accompted for Legitimat, but such as are bozne in the end therof, are to bee holden for bastards.

Of instruments and their credit, and that in euery instrument there be protochols left, that is, signes and notes of the time, when such a contract was made, and who was notarie and witnesses to the same, and that after it bee written faire, and ingrossed in a lidge or faire mundum Booke.

The fifth Collation forbiddeth the alienacion or selling away of the immoueable possessions of the Church, vnlesse it be done vnder certaine solemnities, and then only when the moueable goods are not sufficient to pay the debts of the Church or holy place.

Further, it prouideth that the name of the Prince for the time being, be put in all instruments, and the day and yeare when the instrument was made.

That the Wath of the deceased, as concerning the quantitie of his goods, so far as it toucheth the diuision of the same among his children, be holden for good, but that it be in no sort preiudicial to the creditors.

Of women tumblers, & such other of like sort, which with the feates of their body, maintaine themselves, that no oath or suertie be taken of them, that they wil not leaue that kind of life, since such oath is against good maners, and is of no validitie in Law.

That such gifts as are giuen by priuat men to their Prince, need no record, but are good without inrolling of them, and in like sort such things as are giuen by the Princes to priuat men.

That no person, thing, or gold of an other man be arrested for another mans debt, which they now call reprisals, & that he which is hurt by such reprisals, shall recouer the foure double of the damages that he hath suffered thereby, and that one man be not beaten or stricken for another.

That



That he that calls a man into law out of his Territorie, or Province where he dwelleth, shall enter caution, if hee obtaine not in the suite against him, he shall pay him so much as the Judge of the Court shall condemne him in. And that he who hath giuen his oath in Judgemēt, shall pay the whole costs of the suite, but after shall bee admitted to prosecute the same if hee will, so that hee put in suerties to perfoyme it.

That such women as are vniuersed shall haue the fourth part of their husbands substance, after his death, and in like sort the man in the womans, if the man or woman that suruiueth be poore.

That Churches or Religious persons may change grounds one with another: For that one priuiledged persons right ceaseth against another, that is in like sort priuiledged.

That such changes of manors, Lands, Tenements, and Hereditaments, as are made by Churchmen to the Prince, be not fained matters, and so by the Prince come to other mens hands, who haue set on the prince to make this change, and that the change be made to the Princes house only, and if the Prince, after conuey or confer, the same vpon any priuat man, it shall be lawfull for the Church to reenter vpon the same againe, and to repossessed it as in her former right.

That in greater Churches, Clerkes may pay something for their first admittance, but in lesser Churches it is not lawfull.

That such as build, found, or indowe Churches (which must goe before the rest) doe the same by the authoritie of the bishop; and that such as are called patrons, may present their Clerkes vnto the Bishop, but that they cannot make or ordaine Clerkes therein themselves.

That the sacred misteries or ministeries bee not done in priuate houses, but bee celebrated in publicke places, lest thereby things be done contrarie to the Catholicke and Apostolicke faith; vnlesse they call to the celebrating of the same, such Clerkes, of whose faith and consozmitie there is no doubt made, or are deputed thereto by the

god will of the Bishop, but places to pray in euery man may haue in his owne house; if any thing be done to the contrary, the house wherein these things are done, shall be confiscated, and themselves shall be punished at the discretion of the Prince.

That neither such as be dead, nor the Tolls or Funerall of them be iniured by the creditors, but that they bee buried in peace.

That womens Joyntures be not sold, or made away, nor not euen with their owne consent.

In what place, number, forme, maner, and order, the princes counsell is to sit, and come together.

That he that is conuicted in iudgement, if he wilfully abscent himselfe, may be condemned after issue is ioyned.

That no man build a Chappell or Oratorie in his house, without the leaue of the bishop, and before he consecrate the place by prayer, and set vp the Crosse there, and make Procession in the place; and that before he builde it he allot out lands necessarie for the maintenance of the same, & those that shall attend on Gods seruice in the place: and that Bishops be not non-residents in their Churches.

That all obey the Princes Judges, whether the cause bee Ciuill or Criminall they iudge in, and that the causes be examined before them without respect of persons, and in what sort the Processe is to be framed against such as be present, and how against those that be absent.

The first Collation, sheweth by what means children illegitimate, may be made legitimat, that is, either by the Princes dispensation, or by the fathers Testament, or by making instruments of marriage betwene the Mother and Father of the children, so that the Mother die not before the perfecting of them, or that she liue riotously with other men, and so make her selfe vnworthie to be a wife.

That Noble personages marry not without instruments of Dowrie, and such other solemnities as are vsuall in this behalfe, that is, that they profess the same before the bishop, or minister of the place, and three or foure witnesses at the least,



least, and that a remembrance thereof be left in writing, and kept with the Monuments of the Church; but that it shall not bee needfull for meaner persons to obserue the former solemnities.

That such as were indebted to the Testator, or they to whom the Testator was indebted, bee not left Tutors or Gardeins to their children; that if any such bee appointed a Tutor, a Curator bee ioyned to him to haue an oversight of his dealing: that Tutors or Curators are not bound by Law to let out the Orphans money, but if they do, the interest shall be the Orphans; and the Tutor shall haue euery yeare two moneths to find out sufficient men, to whom hee may let the money out to hyer, for that it is let out at his perill: that if the Orphans state be great, so that there will bee a yearly profit aboue his finding, the Tutor shall lay by the residue for a stock against he comes to age, or buy land therewith, if he can find out a good bargaine, and a sure title: but if the childes portion be small, so that it will not find him, then the Tutor or Curator shall dispose of the Orphans state as he would dispose of his owne, to which also hee is bound by oath.

How such instruments are inrolled before Judges, as concerning matters of borrowing and lending and such like, may haue credit: how men may safely bargaine either with writing or without writing, if themselves be ignorant men; and of the comparison of Letters, and what credit there is to be giuen to an instrument, when the writings and witnesses doe varie among themselves.

Of vnchaste people, and such as Riot against nature, whose punishment is death.

Of such as dispitefully, on euery light trifle, sweare by God, and blaspheme his holy name, against whom also is prouided the sentence of death.

That the Justices of Peace, or other officers to that purpose appointed, speedily dispatch the business of those which are of their Jurisdiction: that such as come as strangers and sojourners out of other contries, hauing no iust cause of their

comming, they send backe againe with their substance, to such places as they came fro; but if they be idle vagabonds and Rogues, or other like valiant beggers, they either drive them out of the place, or compell them to labour: yet euer more hauing regard to provide for such as are honest, poore, old, sick, or impotent.

That Clerkes bee first conuented before their Ordinarie, and that the Ordinarie do speedily end the matter, that they may not be long absent from their benefices: and that they be not drawne before temporall Judges, vnlesse the nature of the cause doe so require it, as that it be a mere Ciuile cause, or a criminal cause, belonging wholly to the Temporall court; wherein, if a Clerke shall bee found guiltie, he shall first bee depriued from his ministerie, and then shall bee deliuered ouer into the Seculer hands: but if the crime bee solely Ecclesiasticall, the Bishop alone shall take knowledge thereof, and punish it according as the Canons doe require.

That where one dieth without issue, leauing behind him brethren of the whole blood, and brethren of the halfe blood; the brethren of the whole blood haue the preheminence in the lands and goods of the deceased, before the brethren of the halfe blood, whether they be of the fathers side, or the mothers side.

That no man make Armour, or sell it, without the princes leaue, vnlesse they bee knives or other such like small weapons.

That prooffe by witnesses was deuised to that end, that the truth should not be concealed; and yet all are not fit to be witnesses, but such alone as are of honest name and fame, and are without all supition of loue, hatred, or corruption; and that their dispositions bee put in writing, that after the witnesses bee published, and their depositions bee knowne, there bee no more production of witnesses, vnlesse the partie sweare those proffes, came a new vnto his knowledg.

If Parents giue profusely to one of their children, the other



other notwithstanding, shall haue their lawfull porcions, vnlesse they be proued to be vnkinde towards their parents.

That women, albeit they be debtoꝝ oꝝ creditoꝝ, may be Tutoꝝ oꝝ Curatoꝝ to their childꝛen; and that there is not an oath to be exacted of them that they wil not marrie again, so that they rensunce their priuiledge graunted vnto them per Senatus consultū Velleian, and perfoꝛme al other things, as other Tutoꝝ doe.

That Gouernours of Prouinces are not to leaue their charges befoꝛe they are called from thence by the Pꝛince, oꝛ therwise they incurre the danger of Treason.

That womens Dowries haue a priuiledge befoꝛe all other kinds of debt; that what Dowrie a woman had in her first marriage, she shall haue the same in her second marriage, neither shall it be lawfull foꝛ her father to diminish it, if it return againe vnto his hand.

That a man shal not haue the proprietie of his wiues dowrie, neither a woman the proprietie of that which is giuen her befoꝛe marriage, but the proprietie of either of them shal come vnto their childꝛen, yea though they marrie not againe.

Wills oꝝ Testaments made in the behoufe of childꝛen stand good, howsoeuer imperfect otherwise they are, but they are not auailable foꝛ strāgers (but strangers are they which are not childꝛen) neither mattereth it whether the Will oꝝ Testament be writ by the fathers hand only, oꝝ by some other body by his appointment; & as the father deuidenth the goods among the childꝛen, so they are to haue their parts.

Of Hereticks, and that such are Hereticks which do refuse to receiue the holy Communion at the ministers hand in the Catholick Church: that Hereticks are not to be admitted to roomes and places of Honor, and that women Hereticks may not haue such priuiledge as other women haue in their Dowries.

That is called Mariners vsury that is wont to be lent to Mariners oꝝ Marchant men, specially such as trade by sea, which kind of lending, y law calleth passage money, in which kind of vsury, a man cannot go beyond the 100. part.

That

**That Churches inioy a 100. yars prescription.**

**That such things as are litigious, during the controuersie, are not to be sold away. A Litigious thing, is that which is in suite betwene the plaintife and defendant.**

**That while the suite dependeth, there bee no Letters of Coit procured from the Prince concerning the cause in question, but that the cause be decided according to the generall Lawes in vse.**

**That in Diuorces, the childzen be brought vp with the innocent partie, but at the charges of the nocent, and that Diuorces bee not admitted, but vpon causes in Law expessed.**

**That no woman, whose husband is in warfare, or otherwise absent, shall marry againe, befoze she haue certaine intelligence of the death of her former husband, either from the Captaine vnder whom he serued, or from the gouernour of the place where he died; and if any woman marrie againe without such certain intelligence, how long soeuer otherwise her husband be absent from her, both she (and he who married her) shall be punished as adulterers, and if her former husband after such marriage, retozne back againe, she shall retorne againe to her former husband, if hee will receiue her, otherwise she shall liue apart from them both.**

**If any man beat his wife, for any other cause, than for which he may be iustly seuered or diuorced from her, hee shall for such iniurie be punished.**

**If any man conceiue a iealousie against his wife, as that she vseeth any other man moze familiarly then is meete shee should, let him thre seuerall times admonish him therof, befoze thre honest and substanciall men, and if after such admonition he be found to commune with her, let him be accused of adultery befoze such Judge, who hath authoritie to correct such offences.**

**The ninth and last Collation containeth matter of succession in goods, that as long as there be any Descendent, either Male or Female, so long neither any ascendent, or any collaterall can succeed, and that if there be no discendent, then the**



the ascendent be preferred, before the collaterall, vnlesse they be brethren or sisters of the whole blood, who are to succeed together with the ascendent; but in ascendents, those are first called which are in the next degree to the deceased, then after those which are in a more remote degree: that in collaterals all be equally admitted, which are in the same degree, and of the same Parents, whether they be male or female.

That the lands of any Church, Hospitall, or other like Religious place, be not sold, aliened, or changed, vnlesse it be to the Princes house, or to, or with an other like Religious place, and that in equall goodnesse & quantitie, or that it be for the redemption of Prisoners: and that they be not let out to any priuat man more than for 30. yeares, or 3. liues, vnlesse eyther the houses be so ruynated, that they cannot be repayed without great charges of the Church, or other religious houses, or that it be ouercharged with any debts or dueties belonging to the Erchequer, and thereby there cometh small reuenue to the Church, or Religious place thereout; in euery of which cases it is lawfull to let out the same for euer, reseruing a yearely competent rent, & other acknowledgements of other souerainties therein.

That the holie vessels of the Church be not sold away, vnlesse it be for the ransoming of Prisoners, or that the Church be in debt; in which case, if they haue more holy vessels than are necessary for the seruice of the Church, they may sell those which are superfluous to any other Church, that needeth them, or otherwise dispose of them at their pleasure for the benefit of the Church, or other holy place whole they are.

Where Usurie in procelle of time doth double the principall, there Usurie for the time to come doth cease, and those particuler payments which afterwards do follow are reckoned in the principall.

What kind of men are to be chosen Bishops, such as are sound in faith, of honest life & conuersation, and are learned, that such as choose them, sweare before the choice, they shall neyther choose any for any reward, promise, friendship, or any other sinister cause whatsoeuer, but for his worthynesse

and good parts only.

That none be ordeined by Symonie, and if there be, that both the giuer, taker, and mediator thereof be punished according to the Ecclesiasticall Lawes, and they all made vnworthie to hold or inioy any Ecclesiasticall living hereafter.

That if any at the time of any Bishops election, object any thing against him that is to be elected, the election be staied, till p<sup>ro</sup>ofe be made of that which is objected by the aduersarie against the partie elected, so that he p<sup>ro</sup>oue the same within 3. Moneths; and if any proceeding be to the consecration of of the same Bishop in the meane time, it is void.

That the Bishop after he is ordeyned, may without any danger of Law giue or consecrate his goods to the vse of the Church, where he is made Bishop, and that he may giue such fees as are due to the electors by Law or custome.

That Clerks be not compelled to vndergoe personall functions, and seruices of the common wealth, and that they busie not themselues in seculer affaires, & so thereby be drawen from theyr spirituall function.

That Bishops for no matter or cause be drawen before a temporall Judge, without the Kings speciall commaundement, and if any Judge presume to cal any without such speciall warrant, the same is to lose his office, and to be banished therefore.

That no Bishop absent himselfe from his Dioces without vrgent occasion, or that he be sent for by the Prince, and if any doe absent himselfe aboue one yeare, that he shall lack the p<sup>ro</sup>fit of his Bishopricke, and be deposed from the same, if he retorne not againe within a competent time appointed for the same.

What manner of men are to be made Clerks, such as are learned, & are of good Religion, of honest life & conuersation, and are free from suspition of incontinency: that no Minister be lesse then 35. yeares of age, and that no Deacon or Subdeacon be vnder 25. that all Clerks and Ministers be ordeyned freely.



If any build a Church, and indow the same, that he may present a Clerk thereto, so that he be worthy to be admitted therto: but if he present an unworthy man, then it appertaineth to the Bishop to place a worthy man therein.

If any Clerke be convicted to have swoyne falsely, he is to be depriued his office, and further to be punished at the discretion of the Bishop.

That Clerks be conuented before their owne Bishops, and if the parties litigant stand to the B. order, the Ciuill Judge shal put it in execution: but if they agree not vpon the iudgement, then the Ciuill Judge is to examine it, & eyther to confirme or infirme the B. order, & if he confirme it, then the order to stand, & if not, then the party grieved to appeal.

If the cause be criminall, and the Bishop find the party guiltie, then the Bishop is to degrade him, and after to giue him ouer to the secular power: the like course is to be held, if the cause be first examined before the temporall Judge, and the partie found guiltie, for then he shall be sent to the Bishop to be depriued, and after againe shall be deliuered to the secular powers to be punished.

That Bishops be conuented before their Metropolitans.

That such as in Seruice time do abuse, or iniure the Bishop, or any Clerk in the Church, being at diuine Seruice, be whipt, and sent into banishment: But if they trouble thereby the diuine Seruice it selfe, they are to dye the death for the same.

That Lay men are not to say or celebrate diuine Seruice, without the presence of the Minister, and other Clerkes thereto required.

That such as goe to Law, sweare in the beginning of the suit, that they haue neyther promised, or will giue ought to the Judge, and that vsuall fees be taken by the Aduocates Counsellors, Proctors, or Attournies, & if any man take moze than his ordinary fees, he shall be put from his place of practise, and forfeit the foure double of that he hath taken.

That the 4. generall Councils be holden as a Law, and that which is decreed in them.

That the B. of Rome hath the first place of sitting in all assemblies, and then the B. of Constantinople.

That all Clergie mens possessions be discharged from all ordinary and extraordinary payments, sauing from the repairing of Bridges and High wayes, where the said possessions do lye.

That no man buyld a Church, or holy place, without the leaue of the B. and befoze the Bishop there say Seruice, and set by the signe of the Crosse.

That no man in his owne house suffer Seruice to be said, but by a Minister allowed by the Bishop, vnder paine of confiscating of the house, if it be the Lord of the house that presumeth to doe it, or banishment, if it be done by the tenant.

If any bequeath any thing to God, it is to be paied to the Church where the Testator dwelled.

If any deuise by his last Will a Chappell, or Hospitall, to be made, the Bishop is to compell the Executors to perfozme it within five yeares, after the decease of the Testator, and if the Testator name any gouernor, or poze thereto, they are to be admitted, vnlesse the Bishop shall find them vnfit for the roome.

That the Bishop see such Legacies perfozmed, as either are giuen for the redemption of Prisoners, or for other godly vses.

That Masters of Hospitals make an accompt of their charge, in such sort as Tutors doe.

That such as lust against nature, and so become brutish, receiue condigne punishment worthy their wickednesse.

That such as make Eunuches, themselves be made Eunuches, & if they escape aline, their goods to be forfeited to the Erchequer, and themseluss be imprisoned all the dayes of their life.

Such as by force steale away women, themselves, & such as are their abbetters, and helpers, are to dye therfore, and that it shall not be lawfull for her that is carried away, to marrie to him that doeth carrie her away: and that if  
her



her father do giue his consent to such marriage, he is to be banished: but if she marry him without her fathers consent, then is she not to take benefit by her fathers will, or any other thing that is her fathers.

These, and sundry matters of great importance, and necessarie for the well governing of a Common wealth, are conteyned in the Authenticks, which I passe ouer with drie foote, not because they are not necessarie to bee knowne, but because I would not cloy the Reader euen with those things which are good.

All these woꝝkes are the labour of Iustinian, as either gathered together by him out of auncient Latopers bookes, and such Emperors decrees, as went before him, or else were decreed & ordeyned by himselfe, as matter & occasion offered it selfe, & the yongest of them is nere eleuen hundred yeares of age, that is within 500. yeres after Christ, or not much otherwise.

The last Tome of the Ciuill Law is the Fendes, that is the bookes of Customes & Seruices that the subiect or bassall doth to his Prince, or Lord, for such lands or fees as he holdeth of him.

This peece of the Law, although it was not much in vse in the old Emperors dayes, yet Iustinian himselfe seemeth to acknowledge them in his Nouell constitutions, calling them *spatiales*, and those which are moze carefull to seek out the beginning of them, bring them, some from the auncient Clientles or retinewes the ancient Romans before Christ his time had, as Budeus doth; some other from Alexander Seuerus time, who as Lampridius in the life of Alexander saith, gaue such lands as he won out of the Enemies hands to his Lords Marchers, and his souldiours, that they should be theirs, & their heires for euer, so they would be souldiours, neyther should they come at any time to the hands of any priuat man, saying, they would moze lustily serue, if they fought for their owne land; which opinion commeth next to the auncient border-grounds of the Romans, where of there is a Title in the 11. Booke of the Code, De fundis

Limitrophis, that is of Border-ground: Others refer it ouer to Constantine the greats time, which inacted for the benefit of his souldiours, that such Lordships & lands as befoze time they had their wages out of, should passe ouer vnto their heires, and be appropriated to their familie, or stocke, so that they found and mainteyned continually a certaine number of souldiours.

From whence soeuer it descended, this is certaine, that it came verie late to be a particuler volume of the Law it selfe. The compilers or gatherers together thereof were Obertus de Horto, and Giraldus Compagist, two Senators of Millaine, who partly out of the Ciuill Law, and partly out of the Customes of Millaine drew the same, but without forme or order.

The word it selfe is a barbarous word, but had his origin notwithstanding as Isidor saith from the word Foedus, being a good Latin word, and so is to be interpreted tanquam Feodum, that is, as a thing covenanted betwene two: Others deduce it from the word Fides, as it were in Latin Fideum, and by a more pleasant pronunciation Feudum, whereupon such as are feudataries to other, are called in Latin Fideles, because they owe sayth and allegiance to such whose feudataries they are, who in the Lombard tongue are called Massals. Beside, Fealtie, which some call Hominium, by the Feudists is termed Homage: for the nature of a Feude is this, that it draweth with it sayth and homage: so that such as are feudataries, or free men, professe themselves to owe sayth to such to whom they are in fee, and that they are his men; insomuch as when a free man dyeth, his Heire doth make sayth, and doth his homage to the Lord, as is well seene both in the Lord Spirituall and Temporall of this land, who both in their creation, and also in their succession one after an other sweare an oath, & doe their homage to their Soueraigne, and doe pay other duties which are simbols and signes of their subiection to their soueraigne: And for others that are vnder the degree of Barons, and yet are free men vnto the King, and so do not



not manuell obedience vnto his Maiestie, they pay yearely something in respect of theyr homage, according to the quantitie or qualitie of the fee or tenure they hold of the Prince.

A Feude in English may be called a tenure, which caused Littleton when he treated of Feudes, so far forth as they are here in vse in England (Such as are all those which are called in Latin Feuda militaria, & Feuda scutiferorum, called by Iustinian *ὑποθήκη*, which are by the Lawes of the land, termed by the named of knights seruices, and Escuage,) to call them by the names of Tenures.

A Feude is a grant of lands, honours, or fees, made either to a man at the will of the Lord, or Soueraigne, or for the Feudataries owne life, or to him, or his heires for euer, vnder condition, that he and his heires in case where the feude is perpetuall, doe acknowledge the gyuer and his heyres to be their Lord and Soueraigne, and shall beare faith and alleageance vnto him, and his, for the said Tenure, and shall doe such seruice to him and his for the same, as is betwene them couenanted, or is proper to the nature of the feude.

Of Feudes, some are Tempozall, some other are Perpetuall.

Tempozall feudes are those that are gyuen, eyther for terme of a mans life, or for yeares, or at the will of the Lord, for some seruice done, or to be done; such as are Annuities giuen to Lawyers for counsell, Pensions giuen to Physitions for their aduise, Stipends to any Teacher of artes and sciences, Fees for keeping of Towers or Castles, called by Feudists Castalia, and is by Littleton called Castle ward, although by him it is taken for a state of inheritance.

Perpetuall Feudes are rights which men haue by grant from the Soueraigne, or chiefe Lord of the soyle or territorie, to haue, hold, vse, occupie, and inioy honours, manors, lands, tenements, or hereditaments, to him and his heires for euer, vpon condition that the said bassall or partie, his heyres and successors, doe homage and fealtie to his Lord,  
his

his heires and successors, for such honors, landes, or hereditaments, and doe him eyther seruice in warre, according as it is couenanted betwene the Lord and his vassall, or such other seruice as the nature of his tenure doth require, or if he faile therein, shall either find some other in his roome to do the same, or else pay a certaine summe of money in lieu thereof.

Although this Tenure by the first creation thereof be perpetuall, yet that the soueraignty thereof should not still remaine vnprofitable to the first Lord, the whole benefyt thereof going continually to the vassall or tenant: it is provided that the Soueraigne or chiefe Lord the first yeare, the heyre or Successor of the vassall comes vnto his land, shall haue the whole reuenue of his liuelihod for that yeare, or a certaine summe of money in token of the retoyne thereof vnto the Lord, and the redemption thereof made againe by the tenant, which by the Law of the French is called *Redimtion*, & is well nigh the same that we call liuery, which euery heire that holdeth in knights seruice, sueth out before he take possession of his land, as heire to his ancestors.

This Tenure is got eyther by Inuestiture or by Succession.

Inuestiture is the same that we call Creation, and is the primier grant of a feude or tenure to any, with al rights and solemnities thereto belonging, wherein the homager, or feodatarie for the most part vpon his knees promisseth faith and allegiance vnder a solempne oath vnto his Lord, and his successors.

Succession is whereby the eldest sonne succedeth, the father in his inheritance, and if he faile and haue no issue, then the next brother, and so in order successiuelly, and if there be no sonne, then the next heire male, and if their bee no heyre male, then the land escheats vnto the Lord. For the Lombards, from whom the feudes first came, or at the least were chiefly deriued from them, directing all their policie as the Lacedemons did, to matters of warre, had no feminine feudes among them, but after by procelle of time, there were created



created aswell Feminine feuds as Masculine feuds, inso-  
much as where there was no issue male to put them from it,  
women did succed in the inheritance.

Of Feuds, some are regall, some not regall: Regall are  
those which are giuen by the p[ri]nce only, neither doe belong  
to any inferior to giue.

Of these, some are Ecclesiasticall, as Archbishopricks, Bi-  
shopricks and such like: Others are Ciuile or Temporal, as  
Dukedomes, Earledomes, Counties, and Lords, who by  
that are distinguished from the rest of the people, that they  
haue the conducting of the P[ri]nces Armie at home and a-  
broad, if they be thereto appointed, and haue right of Peeres  
in making of Lawes, in matters of triall, and such other like  
businesses.

Not Regall are those which hold not immediatly of the  
P[ri]nce, but are holden of such Ecclesiasticall or Ciuile  
States which haue had their Honours immediatly from  
the P[ri]nce.

Besides of Feuds, some are Liege, others not Liege;  
Liege Feuds, are they in the which the vassall or feodato[r]ie  
promiseth absolute fealtie or faith to his Lord, against all  
men without exception of the King himselfe, or any other  
more auncient Lord to whom besides he oweth alleagance or  
seruice. Of this sort there is none in this Realme of Eng-  
land, but such as are made to the King himselfe, as appeareth  
by Littleton in the title of Homage, wherein is specially  
excepted the faith which the Homager oweth to his Lord  
the King.

Feuds not Liege, are such wherein Homage is done, with  
speciall reseruatiō of his faith and alleagance to the p[ri]nce  
and Soueraigne.

Of such as are Vassals or Liege men, some are called Val-  
uafores maiores; others Valuafores minores. Valuafores  
maiores are such as hold great places of the State vnder the  
Emperour or King, as are the degrees of Honour before  
named, and are called Peeres of the Land, which only giues  
Nobilitie. Valuafores minores, are those which are no Peeres

of the Land, and yet haue a preheminance about the people, and are, as it were, in a middle Region betwene the people and the Nobilitie, such as are Knights, Squires, and Gentlemen.

The Feuds are lost by sundry waies, by default of issue of him to whom it was first giuen, which they call *Apertura feodi*; by surrender therof, which by them is termed *Refutatio feodi*; by forfeiture, and that was in two sorts, either by not doing the seruice that his tenure did require, or by committing some villenous act against his Lord, as in conspiring his Soueraignes death, defiling his bed, or deflowzing his daughter, or some other like act treacherous to his Lord, and vnworthy of himselfe.

And so much of the Ciuile Law, and the Bookes thereunto pertaining. Now it followeth I doe in like order speake of the Canon Law, which is more hardly thought vpon among the people, for that the subject thereof, in many points, is of many grosse and superstitious matters vsed in the time of Papistrie, as of the Masse, and such other like trumperie; and yet there are in it beside, many things of great wisdom, and even those matters of superstition themselves, being in a generalitie, well applyed to the true seruice of God, may haue a good vse and vnderstanding.

The Canon Law, hath his name of the Greeke word *Canon*, which in English is a Rule, because it leads a man straight, neither drawes him to the one side or the other, but rather correcteth that which is out of Leuell and Lyne.

The Canon Law consisteth partly of certaine Rules, taken out of the holy Scripture, partly of the writings of the auncient fathers of the Church, partly of the ordinances of general & prouincial Councils, partly of the Decrees of Popes of former ages.

Of the Canon Law, there are two principall parts, the Decrees and the Decretals.

The Decrees are Ecclesiasticall constitutions, made by the Pope and Cardinals, at no mans suite, and are either  
Rules



Rules taken out of the Scripture, or Sentences out of the auncient Fathers, or Decrees of Councils.

The Decrees were first gathered together by Ivo, Bishop of Carnat, about the yeare of our Lord God but afterward polished and perfected by Gratian, a monke of the order of Saint Bennets, in the yeare 1149. and allowed by Eugenius the Pope, whose Confessor hee was, to bee read in Schooles, and to bee alledged for Law.

Of all the severall volumes of the Canon Law, the Decrees are the auncientest, as hauing their beginning from the time of Constantine the great, the first Christian Emperour of Rome, who first gave leaue to the Christians freely to assemble themselves together, and to make wholesome lawes for the well gouernment of the Church.

The Decrees are diuided into three parts, wherof the first teacheth of the origin and beginning of the Canon law, and describeth and setteth out the rights, dignities, degrees of ecclesiasticall persons, and the manner of their elections, ordinations, and offices, and standeth of one hundred and ten distinctions.

The second part setteth out the causes, questions, and answers of this Law, which are in number 36. and are full of great varietie, wisdom, and delight.

The third and last part, containeth matter of consecration of all sacred things, as of Churches, bread and wine in the Sacrament, what daies and feasts the Primitive Church vsed for the receiuing thereof, of the ministering of the Sacraments in Baptisme, and the vse of imposition of hands, all which is set out vnder five distinctions.

The Decretals are Canonically Epistles, written either by the Pope alone, or by the Pope and Cardinals, at the instance or suite of some one or more for the ordering and determining of some matter in controuersie, and haue the authority of a law in themselves.

Of the Decretals there bee three volumes, according  
to

to the number of the authoꝝ which did deuise and publish them.

The first volume of the Decretals was gathered together by Ramundus Barcinus, Chaplein to Gregory the ninth, at his the said Gregories commaundment about the yeare 1231. and published by him to be read in scholes, and vsed foꝛ Law in all Ecclesiasticall Courts.

The sert is the worke of Boniface the eight, methoded by him about the yeare 1298. by which, as hee added something to the ordinance of his predecessoꝝ, so hee tooke away many things that were superfluous and contrarie to themselues, and retained the rest.

The third volume of the Decretals, are called the Clementines, because they were made by Pope Clement the first of that name, and published by him in the Councell of Vienna about the yeare of grace 1308.

To these may be added the Extrauagants of Iohn the xxij. and some other Bishops of Rome, whose authoꝝ are not knowne, and are as Pouell constitutions vnto the rest.

Euery of these foꝛmer volumes, are diuided into fise Bookes, and containe, in a manner, one and the same titles, whercof the first in euery of them, is the title of the blessed Trinitie, and of the Catholicke faith, wherein is set downe by euery of them a particuler beliese, diuers in words, but all one in substance, with the auncient Symbols, oꝛ beliese of the old D<sup>o</sup>thodor, oꝛ Catholicke Church.

Secondly, there commeth in place the treatie of Rescripts, Constitutions and Customes, and the authoritie of them, and when they are to be taken foꝛ Law: after followeth the meanes whereby the greater gouernours of the Church, as namely, Archbishops, Bishops, and such like come vnto their roome, which was in two sorts, according as the parties place oꝛ degree was when he was called vnto the roome, as if he were vnder the degree of a Bishop, and was called to bee Bishop, oꝛ being a Bishop, was called to be an Archbishop, oꝛ to be the Pope himselfe, he was thereto to bee elected by the Deane and Chapter of the Church where he was to bee  
Bishop,



Bishop, or by the Colledge of the Cardinals in the Popes dome; but if he were already a Bishop or an Archbishop, and were to be preferred unto any other Bishopricke or Archbishopricke, then was he to be required by the church, he was desired unto and not elected, which in the Law was called Postulation; after Postulation followed translation by the superiour, to the See to the which he was postulated or required; after Election followed Confirmation and Consecration of him that was elected, which both were to be done in a time limited by the Canons, otherwise the partie elected, lost his right therein.

Bishops and other beneficed men, sundry times upon sundry occasions resigne their benefices, and therefore is set downe what a renunciation or resignation is, who is to renounce, and into whose hands and upon what causes a man may renounce his benefice or bishopricke: and because vnder Ministers are oftentimes negligent in their Cure, that the people, in the meane time may not bee defrauded of Divine Service, the Sacraments, and the food of the word of God; it is provided that the Bishop shall supply the negligence of such Ministers as are vnderneath him in his Jurisdiction: besides, because holy orders are not to be given but by imposition of hands, with prayer and fasting, foure fit times in the yeare, are for the same limited, where also is set downe how they are to bee qualified which are to be ordered, what triall or examination is to bee had of them, what age they are to bee of, and what gifts of body or mind they are to be indowd withall: what Sacraments may be reiterated, what not: that Ministers sons are not to succeed their fathers in those benefices wherein their fathers immediatly before were Pastors or gouernours, lest happily thereby theremight be claimed a succession or inheritance in the same: that no bondmen or accomptants, men distorted or deformed in body, biganists or twice married men, be admitted to holy orders.

Of wandering Clarkes, and how that they are not to be admitted to minister in another Diocesse, then where they

are ordered without the Dimissarie Letters of the bishop vnder whom they were ordered.

Of Archdeacons, Archpriests, Sacrists, vicars, what they are, and wherein their particular offices do consist.

Of the office of Judges in generall, and their power, whether they bee Delegats, Legats a latere, or Judges ordinarie.

Of difference in Jurisdiction betwene Ministers & Ministers, and what obedience the inferiour Ministers are to yeeld vnto their superiours.

Of Truce and Peace, which Ecclesiastical Judges are to procure, that truces be kept from Saturday in the euening, vntill Monday in the morning, and that there be no fighting from the first day of the Aduent, vntill the eight day after Twelue tide, and that warre likewise doe cease, from the beginning of Lent, vntill the eight day after Easter, vnder paine of Excommunication, against him that presumeth to doe the contrarie; and that in time of war, neither Priests, Clarkes, Marchant men, country men, either going to the field or comming from the field, or being in the field, or the cattell with which they plough, or the seed with which they sow, be hurt or violated.

Judges, before men enter into the dangerous euent of Law, are to perswade the parties litigant by priuat covenants and agreement to compound the controuersie between them, wherein if they preuaile not, then the parties are to prouide themselves of Aduocats, Doctors, or Sincets according as they are priuat men or bodies politicke to furnish their cause, and direct them in proceeding.

If any Church hath bin hurt in any contract of bargaine or sale, or in demising of any Lease, or by the Doctors negligence, it is to be restored againe into her former state, to alledge and plead that for it selfe, which is agreeable to Law and conscience. The like grace is to be graunted to all other Litigants whatsoever, who haue by feare or violence, or any other like vniust cause, bene hindered from the prosecution of their right.



If any, seeing a suite like to be commenced against him, do either appeale before he be served with Procelle, or alienat away the thing whereupon the suite was like to grow, he is to bee compeld to hold ples of the same cause, before the Judge from whom he did appeale, and to answer his aduersarie, as though still he were owner of the thing he did in policie sell or alienat away.

Many times, things which otherwise can haue no speedy end by Law, are compounded by arbitrement. Arbitrators ought to be odd in number, that if they disagree, that which is concluded by the greater part may preuaile. An arbitrement is a power given by the parties Litigant to some, to heare and determine some matter in suite betwene them, & to pronounce vpon the same, to which they are to bind themselves vnder a penaltie to stand.

The first Booke, hauing set out the first obiect of the Law, which standeth in the persons who make vp the Judgemēt, as in the person of the Judge himselfe, the Aduocats, Proctors and Clients, there followeth in the second booke, the second obiect of the same, which is the Judgemēt's themselues, which are to be commenced by a Citation, & that in a competent court fit for the same, by a Libell offered vp in the court by the plaintife, to the Judge, which is to containe the sum of that which is required in Judgemēt; where, if the defendant do againe reconuent the plaintife, he is to answer, albeit the defendant be not of that Iurisdiction: the libel being admitted, the defendant is to ioyne issue, and yet before either of them enter any further into the cause, that there may be faire and sincere dealing in the same, & that all suspicion of malicious dealing therein may be taken away, each of them are to take an oath, the Plaintife, that hee doth not of any malice prosecute the suite against the Defendant, or the Defendant of any malice maintain the suit against the plaintife, but that they verily beleue their cause is good, and that they hope they shall be able to prooue, the one his libell, the other his exceptions, if he shall put in any into the Court. The cause being begun, delays are often granted, if either there  
come

come any Holyday betwæne, or any other like iust cause bee offered, as for producing of witnesses and such like: If there be no iust cause of delay, then the Judge is to goe on in the due course of Law, (prouided alwaies that more bee not demaunded by the plaintife than is due) and that the cause possessarie bee handled before the petitozie, and that hee that is spoiled, bee first and before all things restored to that thing or place whereof he was spoyled, or from which he was put fro; yea, though he haue nothing els to alledge for himselfe beside the bare spoliatioe it selfe. If the one side or other wilfully or deceitfully decline Iudgement, the Judge is to put the other in possession of that which is in demand, or at the least, to sequester the fruits and possessions of that which is in controuersie; but if both parties appeare and ioine issue affirmatiuely, then is it but a question of Law, and not a fact, neither doth there remaine ought els to bee done by the Judge, but that hee giue sentence against him that hath confessed it, and put his sentence in execution. But if issue be ioined negatiuely, then is the plaintife to proue his Libell, so far as it consists in fact, by witnesses which are to be compelled by Law if they will not come, or appeare voluntarily, by publicke and priuat instruments, by presumptions, by coniectures, by oath; which being done, the Defendant in like sort is to bee admitted to proue his exceptions, and cleere his prescription if hee bee able to alledge any, in which hee is Plaintife, neither is hee bound thereto, before the Plaintife haue perfected and proued his owne right.

After p<sup>ro</sup>ues are brought on either side, and the same thoroughly disputed on by the Aduocats, the Judge is to giue sentence, which he is to frame according to the Libell and p<sup>ro</sup>ues formerly deduced in the cause. The sentence being giuen, Execution is to bee awarded, vnlesse there be an appeale made from it within ten daies by the Law, but fittene daies by the Statute of this Land, from the time the partie, against whom sentence was giuen, had knowledge thereof, or vnlesse it be appealed incontinently at the acts,  
and



and in writing befoze a publike notary, or at the lest the partie against whom the sentence proceeded, within due time, take his iourney toward the higher Judge to prosecute the same, by whom the former sentence is eyther confirmed or infirmed, in the second instance.

The third booke conteyneth such Ciuile matters, and causes as are liable to the Ecclesiasticall Courts, as the honest life or conuersation of Clerks, and theyr comely comportment in all their demeanour, with what women they are to cohabit, and dwell with, whereby they may be free from all suspicion of ill life, and with whom not, which of them may be married by the law of the Canons, and which not, in what cases they may be allowed to be non resident, and in what not, and how such as are non residents may be called home vnto their cure, and if they retorne not vpon processe sent out against them, how they are to be punished, namely by deprivation or sequestration of the fruits and commodities of their benefice.

Prebends and dignities are preferments for Clerkes, but not for such as are idle or absent from the same without iust cause: but if any Clerk or Minister be sicke, and his disease be curable he is to receiue the benefit of his prebend or dignity in his absence, as though he were present; but if it be contagious, or incurable, then is he to be put from the exercise of his office, and a helper or coadiutor to be ioyned vnto him, and they both to be mayntained of his stipend.

Prebends or dignities are to be got by institution, which are to be giuen by the Bishop, or his Chancelor, or such other as haue Episcopall iurisdiction, without which, neither any benefice is lawfully gotten, or can lawfully be retyened. Benefices not void, ought neyther to be granted, neyther to be promised; but such as are void ought to be granted wythin sixe monthes after knowledge of the voidance thereof, otherwise the grant of them diuolueth & cometh vnto the superiour: he that causeth himselfe to be instituted into a benefice, the Incumbent thereof being aliue, himselfe is to be deposed from his orders.

While any Benefice, or Bishopricke is void, nothing is to be changed or innouated in it; and such gifts, sales, or changes of Ecclesiasticall things, as are made by the Bishop, or any other like Prelate, wythout the consent of the Chapter, are void in Law: and such Benefices as do become void, are to be bestowed without any impayring or diminution of the same.

In what case the goods and possessions of the Church may be alienated, and in what not, and that such things as are alienated, be alienated by the greater part of the Chapter, otherwise the alienation is void: What goods of the Church may be lent, what sold, what bought, what changed, what demised, or let to lease, what Morgaged, or let to pawne. After these follow Tractats of last Wills and Testaments, of succession by way of Intestate, of Burials, of Tythes, first Fruits and Offerings: Of Monkes, and their state in sundry sorts, of the right of Patronage, of Synodals and Procurations, of consecration of Churches, of Celebration of Diuine seruice, and the Eucharist, of Baptisme, and the effect thereof, of a Priest not baptized, of Fasting, Purification of women, and other like Ceremonies pertayning to Ecclesiasticall discipline: Of buylding and repayring Churches, and of their Church-yards, and the immunitie that belongs to them both, and of sundry other things in like sort pertayning to the Church. That Clerks and other Ecclesiasticall men trouble not themselves about Ciuile matters, contrarie to their office and profession.

The fourth Booke disposeth of matters of Espousals and Matrimonie, & sheweth what words make espousals, what Matrimonie, of the Betrothing of such as are vnder age, of clandestine Espousals and Contracts, and of what accompt they are to be had of in the Church, and how they may be made good: Whether that hath betrothed her selfe to two men, whose wife shee shall be, what conditions may be put in Espousals, and what not, what Clerks or Notaries may marry, and what not: of him that hath married her, with whom before he hath committed Adulterie, and whether the same

second



second Matrimony be good, whereupon the resolution of the Law is, that if the woman knowe not that he had an other wife, he cannot leave her, his first wife being dead, under pretence he had an other wife alive when he married her: but if she knew of it, and did coyne with him in private, or making away his wife, he cannot marrie her, no though he were seperated from the other, as concerning bed and board: Whether Leprose men & other which are infected with like contagious diseases may marrie, and whether being married, the marriage may not be dissolved upon this point: Of kindred spiritual or legall, and in what sort they hinder marriage, of him that hath knowen his owne wifes sister, or his owne cosen german, & whether this offence do break the Matrimony that is contracted, or do hinder the Matrimony that is to be contracted: Within what degrees of consanguinitie or affinitie a man may marrie: Of such as are sold of Pature, or enchanted by Sorcery, whether they may marrie: The like respect is of Women, who are unfit for men: Of such as marrie against the Interdict or prohibition of the Church, and what penalty they incur: What Children be held legitimat: who they be that may be accusers or witnesses in cases of dissolution of Marriages betwene man and wife: Of Divorces betwene man and wife, which are called of the diversitie of mindes that are then betwene them, for that one seeketh to go apart from the other, and in what cases divorces are allowed, and how many kinds there be of them: of gifts betwene man & wife, what securitie they haue in Law, and that the Dowrie after the divorce be restored to the woman, so that it be not in case of Adultery, and other such like filthynesse: Of second Marriages, in what cases they are to be permitted, in what not.

The fifth Booke treateth of such Criminall matters as are handled in Ecclesiasticall Courts, wherein the proceeding is eyther by accusation, whereto the Accuser doth subscribe his name, because it tendeth to punishment: or else by denunciation, whereto the Informer doth not subscribe his name, because it tendeth only to the amendment of the party: or by

Inquisition, which for the most part is not vsed, but vpon  
 same precedent, albeit sometimes it be without same: if once  
 the same be proued, then may inquirie be had of the trueth  
 of the fact, but yet without malice or flaunder. The Cri-  
 minall matters which are prosecuted in the Ecclesiasticall  
 Courts, and censured by Canonickall punishments, are Sy-  
 monie, and selling of Ecclesiasticall graces and Benefices;  
 wherupon Prelates are forbidd to let out their Jurisdictions  
 vnder an annuall rent, and Masters and Preachers to teach  
 for money. The punishment of Iewes and Saracens, and  
 their seruants, that is, if a Iew haue a seruant that desi-  
 reth to be a Christian, the Iew shall be compeld to sell him  
 to the Christian for xij. pence: That it shall not be lawfull  
 for them to take any Christian to be their seruant: that they  
 may repaire their old Synagogues, but not build new: that  
 it shall not be lawfull for them vpon good Friday, to open  
 either their doores, or windowes: that their wiues neither  
 haue Christian Nurces, nor themselues be nurces to Chri-  
 stian women: that they weare diuers apparell from the  
 Christians, whereby they may be knowen, and other igno-  
 minies of like sort. Who be Heretickes, & what be their pu-  
 nishments: who be Schismatickes, & what be their punish-  
 ments. Of Apostataes, Anabaptists, & their punishments:  
 of those that kill their owne Childzen, & their punishments:  
 of such as lay out yong childzen, and other feeble persons to  
 other mens pitie, which themselues haue not, and how they  
 are to be punished: of voluntarie or casual murders: of Tilts,  
 Barriers, & Toznamen: of Clerkes that fight in combat:  
 of Archers that fight against Christians: of Whoredome  
 and adultery, and how they are to be punnished: of such as  
 rauish women, and theyr punishment: of Thæues and  
 Robbers: of vsury and the payne thereof: of deceit and fals-  
 hood: of Sorcery: of collusion and Cosonage, and the reuea-  
 ling of the same: of Childzens offences and that they are not  
 to be punished with the like seueritie as mens offences are:  
 of Clerks hunters, or hawkers, who if they often times vse  
 and sport themselues therein, if they be Bishops, they are to  
 be sus



be suspended, from the Communion three moneths, if Ministers or Priests two, but if he be a Deacon, he is to be suspended from his office: If a Clerk often times strike other men, and being admonished to forbear such kind of violence, doe nevertheless continue in his folly, he is to be deposed: If a Bishop cause any man rigorously to be whipt, he is to be suspended from saying service two moneths: Such as speake ill of Princes, and other like great persons spirituall or temporall, are to be punished, so that other by their example may take heed to speake ill, specially such as blaspheme the Majesty of the almighty God: If Clerks excommunicated, deposed, or interdicted, in that they came to the highest order without passing thorough the inferior orders, or that they came to the same order couenously, and deceitfully, or being not ordered at all, or at the least not ordered lawfully, dare take vpon them eyther to Minister the holy Sacraments, or to say diuine Service, are to be deposed from their office and from their benefice, and neuer after to be ordered: Prelats are not to graue their subiects eyther with rash suspension, or excommunication of their persons, or interdicting of their Churches, but they are to execute all those censures of the Church in iudiciall order: they are not easily to suffer any man to hold two Benefices, where one may suffice, or to reteine any thing to his owne vse, in a Church wherein he hath collation, or subiection, and that he is not to bestow any benefice vpon any that is vnworthy for the same, eyther in life or doctrine, with sundry other excesses of Prelats in the like sort: If any begin to build a Church or Chappell to the pzeiudice of an other, and it be denounced vnto him by the Parson or parishioners of the other Church, that he goe no further in the said works, vntill the Law hath determined it, whether it be a nuisance or not, Of the Priuiledge of Prelates, and wherein they exceed there priuiledge: of canonical purgation which is inioyned, when as yet there is no certein pzoofe of the crime, but there is a common voice and fame of the fact, which is to be cleared by the oath of him who is charged by the same, that he hath not commytted the

fact, and the oath of his good neighbors, who sweare they beleeue that he hath taken a true oath: Of vulgar purgation, which was performed by combate, and passing by burning fire, which is worthily reiected, for that thereby the innocent many times was condemned, and God thereby did seeme to be tempted: Of iniuries and wrongs done: Of Ecclesiasticall punishments due to offences, among which one is, That so often as one offendeth, so often he is to be punished: And that Prelates do not take reward to winke at men in their sinnes, or turne corrections into pecuniary paines vpon gaine of fylthie lucre: Of Penances and Pardons, or remissions: Of Excommunication, which is the greatest punishment in the Ecclesiasticall iurisdiction, and who, and in what cases men are to be stricken thereby.

Of all these goodly and excellent Titles of the Ciuile and Canon Law, so full of wisdome, so full of varietie, so well seruing for euery moment, and state of the Common wealth in peace or in warre, as nothing can be more, the Professors thereof haue very little vse here within this Realme.

For first for the Ciuile Law, (beside the two Uniuersities of this land, that of Cambridge, and the other of Orford, to whom the Kings of this Realme haue granted a larger libertie, in the practize of these Lawes, than to any other place of the Kingdome; for that their purpose was to haue yong men trayned vpon there, in a more ripe knowledge of these professions, that when they came abroad, they might be more ready in all matters of negotiation and commerce, that the Prince or State haue need of them to deal in with forein Nations, when they were thereto called; to which the Lawes of this land, serue nothing at all, by reason of the difference that is betwene their Law, which is either wholly the Ciuile Law, or for the most part grounded on it, & the Law of our Nation) a very few Titles are left to the Practisers thereof to deale in, & most of them seldom and rare in vse, as shall be hereafter shewed, so that I may well diuide all the profession here of the Ciuile Law with vs, into matters ordinarie and extraordinarie.

The



The matters of ordinarie conusance of the Ciuile Law here in this Land, are Marine matters, of which some are Ciuile, some are Criminall.

Ciuile matters are those which concerne eyther the free vse of the Sea it selfe, or the rights that men haue to trade and traffique therupon, or the bargaines, sales, or contracts, or as it were contracts that are made or done beyond or vpon the maine Sea, or any Creeke thereof, or within as much space from the Sea, as the greatest winter waue runneth out, for any matter belonging to any negotiation or merchandise, or any other thing to the Ship or trade apperteyning.

And first for vse of the Sea it selfe; the Law holds it to be common, and that euery one hath right to trade & traffique vpon the same, so that it be without the p̄iudice of that Prince or Land, to whom the Sea is adioyning. The like may be said for the shore it selfe, so that it be eyther for the refreshing of themselves with water, or victuall, or for the repaying of their Ships, or buying any thing necessarie thereunto, or it be either for vttering of any commoditie they haue, or buying any thing againe of the people, vpon whose land they touch: In which case it were barbarous to repell any comming in peaceable maner; albeit it may happen vpon some iealousy of the State, eyther for that it hath some great forrein Enemy, whose continuall inuasion they feare, or that the Sea coasts are much infested with Pyrates, that in this case ther be made resistance, but when it is made manifest by flag of Truce, or otherwise, they are no other but well meaning men, they are to be intertayned with all kindnesse.

For Contracts in Marine causes, some are contracts in deed, some are as it were contracts: Contracts in deed are all bargaines and sales whatsoever made betwene Merchant and Merchant for any commoditie, freight, or traffique in the ship, or any sale or bargain made of the Ship, or any thing thereto belonging, as Passes, cordage, anchorage, victuals, or any other thing of like nature, necessarie for the imploiment of the ship.

Those

*ff ad legem Rho-*  
*dian. de Iust.*  
*tot. tit.*

Those things which are as it were contracts, are those perpetuall rights, which are betwæne the Purser or Master of the Ship, and the Passengers, or betwæne one passenger and an other.

The perpetuall right which is betwæne the Purser or Master of the ship, and the Passengers is, that the Purser or Master be answerable for all such wares or goods as are brought into the ship, whether it be deliuered to himselfe, or any of his Mariners: for he ought not only to be iust and honest himselfe, but also vse the ministerie of honest people about him; and therefore the Master of the ship is no lesse bound for their person, than his owne. The Passengers againe are honestly and readily to pay the Master of the ship their fraught, and all such other charges of dyet, and other prouision as they haue put him to; wherein if there be any default of any side, the Law affoꝝdes an action called Exercitoria, whereby the one or the other may be relieued.

*L. 1. ff. de exercitoria action.*

The Master of the ship is he who hath the charge of the whole anchorage and gouernment of the ship, and his office is either to let the ship to hyze, or to buy and sell Marchandize, or to plie fares, or to prouide tacle and furniture for the ship.

*De l. prima § 16. de exercit. act.*

The Purser, whom the Law calleth Exercitor Nauis, is he to whom all the profit or reuenue of the ship doth come, whether it be in his owne right, or in an others.

The Perpetuall right that is betwæne Passengers and Passengers, and Baylers and passengers is, that in case of eiectionments, and casting out of goods, and other marchandize into the Sea in time of tempests, or other dangers, by rocks or quick sands, for the lightning of the ship, because it is for the common good of all that are in the ship, and the preservation of the rest of the fraught of the ship, it be made vp with the common contribution of all: for good reason it is that they whose goods are saued hereby, should againe with their goods redæme the others losse according to such proportion of goods as they haue in the ship, and the Law of the Sea allowes,

But



But in cases of Ciectments the Law of the Sea is this, (which was taken from the people of Rhodes, who in oldtime, were great seafaring men, and discoverers of sundry Countreies, whose Rules euen to this day are holden for good among all Mariners, for y great equitie and indifferencie that is in them) that as well the Master or Purser of the ship himself shal contribute for the preservation of his ship, as also the passengers for such ware as they haue in the ship, of what sort soeuer it be, albeit happily it be but of smal waight, as pearls, pretious stones, and such like; and if perchance there be some passengers in the ship, who haue no ware nor marchandize in it, yet because themselves are a burthen to the ship, estimate is to be made of his or their apparell, rings, and Jewels, according to which he or they are to contribute towards the losse of such things as are cast out into the sea: neither is there any thing in the whole ship excepted, saue onely those things which are put therein to be spent, for the common good of all, as victuals, fuell, and such like; for those things are not brought in for any one priuat mans vse, but for the benefit and seruice of all: and so much the rather, for that if victuals faile, or other like necessaries want, euery one must contribute thereto, or impart of that which hee hath for his owne priuat prouision; but of mens owne bodies, vnlesse they be seruants, there is no rate to be set, because a freemans body cannot be esteemed.

In pricing, estimate is to be made as well of those things which are lost, as those things which are saued, and the price is to be set downe, not for how much they were bought, but for how much they might be sold, and that for the present, lest the contributors should be ouermuch charged. Neither is it to the purpose that the goods which were lost, might haue bene sold for more, for that herein is not regard to bee had of the gaine, but of the losse. And if any thing that was throwne out were knowne to be decayed or made worse by washing with salt water, it is not to be esteemed as a new fresh thing, but the price thereof is to bee abated accordingly.

Now the contribution is to be made in this manner, first the losse is to be set down, then the rate of those things which are saued, out of which must bee drawne an equall portion, proportionable to the quantitie of euery mans goods he hath in the ship to make vp the losse, deducting out of the losers goods himselfe, so much as is answerable to his proportion so that hee shall neither bee made a cleere sauer, nor a cleere loser, but in a certaine quantitie ratable to his part.

But this contribution is in that case to be made, if the ship be saued; for otherwise if a wrack happen, either befoze the eiection, or in the eiection, then whatsoever any of the bedoers or passengers catch is his owne, neither is there any regard to be had of the losse of the ship, or of the goods, vntlesse perhaps afterwards they be drawen out of the sea.

But here we are to note that neither the things that are thus eiectioned, leaue to be the first owners, neither become his that takes them vp; for because the first owner doth not count them for goods cast away, but still hee beares that miud to them that if he may recouer them, he will hold them as his owne goods, and in consideration of so much as afterward he shall recouer the contribution in the rest shall cease.

Neither if the Master of the ship himselfe by violence of the tempest, shall lose a Mast or a Saile, he shall be more allowed therfore, than a Carpenter to whom a house is let out to bee built, shall bee allowed for his are or saue, if he breake it.

Beside in matters of wracke there is, as it were, a contract betweene them which haue lost their goods by shipwrack, and them vpon whose Lands the said goods are driuen, that the same be restozed to them or their heires, if they come in due time to claime the same: and therfore it is precisely forbid by the Law, that no man shall meddle with such goods as are wreacked, and such as are proued to haue stolne any thing thereout are holden for robbers; for that such goods being cast on land and recouered out of the sea, remaine still his who was the owner thereof, and descend vpon his heire, neither excheat

*Li. ne quid. ff. de  
incendio, ruina,  
& naufragio.*



escheat vnto the King, neither to any other whom the King hath priuiledged in this behalfe. And therfore the Emperour L. 1. lib. 11. c. de naufragiis. Constantine the great, saith worthily in this case; If any ship at any time by shipwrack be driuen vnto the shore or touch at any Land let the owners haue it, and let not my Exchequer meddle with it: for what right hath my Exchequer in another mans calamitie, so that it should hunt after gaine in such a wooll case as this is? And yet if no kindred appeare within a yeare and a day, or appearing, proue not the goods shipwrecked to be theirs, the goods come to the Exchequer euen by that Law: so much that law condemneth carelesnesse, which is written *Vigilantibus & non dormientibus*. And with this agree the Lawes of this Land, as taken out of these imperial lawes; whereby it is ordered that such goods as are saued out of the wrack, shal be kept, by the view of the Sherife or some other chiefe Officer, and deliuered to the hands of such as are of the place where the goods were found, so that if any sue for them and proue them to be his, or to haue perished in his keeping, they shal be restored vnto him without delay; other wise they escheat vnto the king, or to him to whom the king hath granted the same: And if any conuey away any part of the same goods contrary to the law, and bee attainted therof he shalbe awarded to prison, and make fine at the kings wil, and yeeld damages vnto the party grieued: and a wrack by the lawes of this land, is where all liuing things within the ship doe perish, but if a man, a dog, or a cat doe scape out of the ship alive, it is otherwise.

For matters of contract, they are either in the petitorie, or in the Possessorie. The Petitorie is that where the proprietie of any thing is challenged, this of all other suits is the hardest, because the prooue thereof is very difficult: for albeit the proprietie of things may bee got by many meanes, as wel by the law Civile, as by the law of Nations; yet is it not a thing so easie to bee proued, for that there must concur many things to the prooue of a proprietie, otherwise you shall faile in your suit, as in a case of bargain and saile, that there was such a contract betwene

*Institut. de reu. diuisione § summa  
gulo. ii. ff. de ac-  
quirendo reu. dom. no. l. adeo  
& toto titul. C. de quadrienn. prescript. l. bene.*

*C. de acquirend.  
posseff. l. i. ext.  
c. i. de consue-  
tudin.*

the buyer and the seller, that there was either money paid for it, or that he that sold it was content to take the buyers word for it, that deliuerie was made thereof, otherwise the propertie passeth not, but only in some few cases, in which neither possession nor deliuerie is required. Lastly, that hee which sold it was rightfull owner of it, otherwise can he not passe ouer a thing he had no right vnto.

The Lordship or propertie of things, is bipartite; for either it is direct or full, such as men haue when they haue not onely the thing it selfe, whereof they are Lords or Proprietaries, but also the vse and commoditie thereof; or els it is profitable, as is the hold of Tenants and Farmers, who haue the vse, gaine, and possession of the thing, but the Lord the propertie and rent in acknowledgement of his right and Soueraignty.

The Possessorie is that right whereby the vse or possession of a thing is claimed, of which there be three sorts: for it is either in getting of the possession of that a man hath not, or in keeping of the possession of that a man hath, or in recovering and regaining of the possession of that which is lost.

The proceeding in all these Ciuile matters, is by Libell concluding to the action, the partie agent giuing caution to prosecute the suite, and to pay what shall be iudged against him, if he faile in the suite; the Defendant on the contrarie part, securing his aduersarie by sufficient suertie, or other caution, as shall seeme meete for the present to the Judge, that he will appeare in Iudgement, and will pay that which shall be adiudged against him, and that hee will ratifie and allow all that his Proctor shall doe in his name: so to all these ends satisfaction in Iudgement is, which is nothing els but a course to secure the aduersarie of that which is in debate befoze the Judge, that on what side soeuer the cause shall haue an end, the clyents may bee sure to get that which by law shall be adiudged vnto them.

And so much of those matters wherof the Ciuile law here in England vsually holdeth plee. Now of the Criminall matters



matters which belong to that Court, but yet by way of Commission from the prince, and that is that horrible crime of Pyracie, detested of God and man, the actors wherein Tully calleth Enemies to al, and to whom neither faith nor oath is to be kept. *Cicer. 3. lib. off.*

Piracie is called of the greeke word *πῆρα* which is Deceptio in latine, and in English Deceit, for that many times they pretend friendship when they intend nothing els, but robbery and bloudshed; or they are so termed of the word *πῆρα*, that is, of their wandring by and downe and resting in no place, but coasting hither and thither to doe mischief.

A Pyrat is a sea-thiefe, who for to enrich himselfe, either by subtilty, or open force, setteth upon Marchants & others, trading by sea, euer spoiling them of their loading, if they get the upper hand, and sometimes bereaving them of their life, and sinking of their ships.

The proceeding in these Criminall matters, is by accusation and information, and after by triall of twelue men upon the euidence, according to the lawes of this land, and the lawes of the auncient Feudes of Lombardie, where the like triall is, and from whence, it seemeth, this of ours was first deriued. But here must we note, that matters of reprisals are no Pyracies, although many times there falls out no lesse outrage in them, for spoiling and slaying of men, than doth in the other: for that Reprisals are done by the princes commission, graunted to the subiect for redresse of some iniurie done to himselfe or his subiect by some other foraine Prince or Subiect, and amends hath bin required by law, and cannot be had, whereupon licence is given to the subiect to relieue himselfe by what way he can against the other Prince, or any of his subiects, by taking so much goods of his as himselfe was indamaged; which course is held among Princes the rather to afford Justice where it is lawfully demaunded.

*Bartol l. nullus num. 2. C. de Iudeis & Caliculis.*

And thus much of the causes which ordinarily do belong vnto the cognisance of the Ciuile law within this land. Now it followeth that I speake somewhat of those things wherein

the Ciuile Law dealeth incidently and by authoritie of the Prince, & is not the ordinarie object of the Ciuile Law, howsoeuer otherwise they cannot be handsomely dealt in, but by such as haue the skill of the Ciuile Law.

Wherof there be thre sort, the first is matters of sovraine treatie betwene one prince and another, the second is the ordering of martiall causes, whether they bee Ciuile or criminal in an Armie, the last is the Judgements of ensignes and Armes, and the decisions for challenges of rights of Honour and precedence, where any of them is in controuersie.

For the first, wheras all other Nations in compasse round about vs be gouerned by the Ciuile Law, and treaties are to be decided by law, both for those things which are in question, and to be concluded by Law for those things which are determined by consultation and agreed vpon; who is thereto to be chosen rather than a Ciuilian, to whom their law is knowne, as well as to themselves; and if perhaps he vnderstand not their language: yet hee vnderstandeth that language wherein the lawes themselves are written, and is the fittest tongue for treatises betwene Princes and Princes, because it is a common tongue to the learned of all the west part of the world, and thereby euery Prince shall retaine his owne maiestie in parlying, as it were, in his owne language, and not be forced to speake in another Princes tongue, which no doubt, is a great disadvantage to him that shall treat; for that euery Nation hath some proper Idiom not so wel discerned by the booke-speaker, as perceiued by the Natiues of the country where it is spoken, and wherein a stranger may easily bee deceiued.

How much sovraine Princes doe esteeme of the skill of a Ciuilian in these matters, it may bee vnderstood thereby, that they neuer, for the most part send any Embassage for the treatie of any league or matter of commerce, but that one or moe of them are Ciuilians. And if the care of these things bee so great with them, surely the estimation of the same ought not to be light with vs: for by what laws their leagues and negotiations are to bee directed, by the same must  
ours



ours bee ordered, so that for that point, one kind of learning must serue for both; for that otherwise one Nation will not bee conceiued by the other what their capitulations are.

Surely, such as ouer and besides their owne experience, haue the knowledge of the Ciuile law, haue herein a double helpe aboue another man that wanteth the same. First their owne vnderstanding, which for the most part is of like proportion as other folkes is: Then the skill of the law it selfe, which is a quintessence of wit aboue other humane learning, as being either wholly composed of the mature and deliberate resolutions of such Emperours as then swayed the whole world, or were the domes and iudgements of such wise men, as then managed the whole world and the affaires thereof vnder them. But who, when hee seeth a sword in a scaberd, knoweth whether it will cut or not, although the forme thereof bee a presumption, that it will cut: but doe but drawe it out of the scaberd, and try the blade thereof, and then shall you see the sharpenesse of it: I make no application hereof, for that my meaning by my words may be well inough knowne.

But in these matters, the wisdom of the State knowes best what is to bee done, and I onely remember what other Nations doe, leauing the rest to their grauest considerations, who by precedents of former times, and men of experience, furnished with eroticke tongues, haue carried this part of policie verie well and safely hitherto: but now to the ordering of Partiall causes.

Partiall causes are either Ciuile or Criminall, whereof both are determinable by the Ciuile law. A Ciuile Partiall cause, is where either the Captaine or the Soldier requireth some thing that is due & withholden from him, as his stipend, his apparell, which among the Romanes was due twice a yeare, that is for Sommer apparell from the first day of April to the first of September, and their Winter againe from thence to April; his dyet which among the Romans was two daies hard bisket, the third softer bread, one day wine,  
one

*ff. de re militari  
& C. eod. tit. lib.  
12. ff. de priuile-  
gio veteranorū:  
& de castrensi  
peculio. & C. eo-  
dem tit. lib. 12.  
C. de erogatione  
militaris annonae  
& C. de vest. mi-  
litari.*

one other day vineger, one day bacon and two daies mutton; his priuiledges either in cases of preferment, as to be remo-  
ued from one degree to another, or in cases of immunitie, as  
to be freed from all seruile functions, and sundry other like,  
which a diligent reader may gather out of the titles of the  
Digest and Code of militarie affaires, and other like titles  
which accompany them.

Soldiours faults are either proper to themselves, or com-  
mon with others.

Those are common with others, which fall into other men,  
and are corrected with like ordinarie proceeding as other  
crimes of like nature are, as manslaughter, theft, adulterie,  
and such like.

Those are proper which doe properly appertaine to mili-  
tary discipline, and are punished by some vnusuall or extra-  
ordinarie punishment, as are these, not to appeare at Muster:  
to serue vnder him he ought not to serue: to bage or wander  
long from the Tents, although he returne on his owne head:  
to forsake his Colours, or his Captaine: to leaue his stan-  
ding: to fly ouer to the Enemy: to vtter the counsell of the  
Armie vnto the Enemy: to betray the Hoast: to be disobedi-  
ent to his Captaine, Colonell, or Lieutenant: to lose or sell  
his Armour, or to steale an other mans: to be negligent in  
forage, or prouiding of victuall: to neglect his watch: to make  
a mutiny, or fly first out of the field, or other like, which are  
deliuered in the late cited titles, of whom Arrian, who wrote  
the life of Alexander the great, thus saith; Euery thing is cou-  
nted an offence in a Souldiour, which is done contrarie to the  
common discipline; as to be negligent, to be stubborne, to bee  
slothfull.

The punishments wherewith Soldiers are corrected, are  
these, either corporall punishment, or a pecuniarie mulct, or  
inunction of some seruice to be done, or amotion or remouing  
out of their places, and sending away with shame.

By capital punishment is vnderstood for the most part death,  
or at the least beating, vnlesse happily it bee pardoned, ei-  
ther for the vnskillfulnesse of the soldior, or for the mutinie of  
the



the companie, being thereto drawen by wine and wantonnesse, or for the miseration or pittie of the party offending.

All which a wise Judge moderateth according to the qualitie of the person, the quantitie of the crime, and the opportunitie of the time.

The last extraordinary matter that the Ciuile Law Judge dealeth in, is the bearing of Armes, and the ranging of euery man into his roome of hono<sup>r</sup>, according as his place requires: and here first of Armes. For skill in Armo<sup>r</sup>y, although it be a thing now almost proper to the Herauldes of Armes, who were in olde time called Feciales, or Caduceatores, because they were messengers of war and peace, eyther to proclaime the one, or denounce the other: yet the ground thereof they haue from the Ciuile Law, so that thereby to this day they may be directed in their skill, or controled if they doe amisse.

For besides, that there are many other places in the Law, which touch Armo<sup>r</sup>y, as appeareth by the titles here quoted in the margent, Barthol. himselfe maketh a speciall tractat thereof, and diuideth the whole matter of Armes into 3. rancks, according to the diuerse sorts of men that bare them: for some are Armes of some publike dignitie and office, as the Armes of the Legat, or Proconsull, the Armes of Bishops, the Armes of the Lord Admirall; other are Armes of speciall dignities, as Armes of Kings and Princes, which no man is to beare or paint in his house or stufte, vntlesse it be for to shew his duetie or subiedion therein.

The third sort is, of those which are priuat mens Armes, of whom part haue them by the grant of the Prince, or by authoritie of those to whom the Prince hath giuen power to grant Armes to other, as hath the Earle Marshall within this Realme of England; others haue taken them by their owne authoritie, which albeit in former times they might doe, as also they might take such names as euery one did like of (for names and signes in the beginning were inuented, for to know and to discern one man from another) and as euery man might change his name, so might he change his signe, so that it were not done in fraud and deceit: but after

*C. vt nemo priuatus predijs suis, vel alienis vela regia imponat. vt nemo liceat sine ludi. auctor signa imponere. De statutis & imaginib. vt nemo liceat signum saluatoris &c.*

*De his qui potentioris nominis titulos praedij suis affigunt. & ibi doct.*

*ff. de reru diuisione. l. sanctum.*

*C. de ingenuis & manumiss. l. ad recognoscenda ff. de reru diuisione l. sanctum.*

*C. de Mutatione  
noſs l. i. ff. de  
Faliſis, l. falſi  
qominis.*

*L. aduocati C.  
de Aduocatis  
diuerſorū iudi-  
ciorum.*

it was ſoꝛbydden, both that any man ſhould change his name, becauſe it was not thought it could be done with any good meaning, and that no man ſhould beare Armes of his owne authoritie; and therefore Officers were appointed vnder Princes, as I haue ſaid, who ſhould giue Armes to ſuch as deſerued well of the common wealth, eyther in warre oꝛ peace: ſoꝛ albeit in the beginning Armes and Coloꝛs were pꝛoper to men of warre, to auoid confuſion in the hoaſt, & to diſcerne one companie from an other, yet when it came to be a matter of honour, it was challenged no leſſe by men of peace, than by men of warre; ſoꝛ true in deed is that ſaying of Tully, *Parua ſunt foris arma niſi eſt conſilium domi*: and the Emperour ſpeaking of the benefit, that Aduocates, and ſuch like bzing to ſtates and Common wealthes, ſayth thus, Aduocates which bzake the doubtfull fates of cauſes, and with the ſtrength of their defence ſundꝛy times, aſwell in publike cauſes as in pꝛiuat, raiſe vp thoſe that are ſalne, and releue thoſe which are wearied, doe no leſſe good vnto mankind, than if by warre and wounds they ſaued their parents and Countrey: ſoꝛ we (ſaith he) doe not count that they on- ly doe warre ſoꝛ our Empire; which doe labour with ſword, ſhield, and Target, but alſo our Aduocates, ſoꝛ indeed the Aduocates oꝛ Patrons of cauſes do warre, which by confidence of their glorioꝛs voyce doe defend the hope, life, and poſteritie of ſuch as be in danger: thus ſayeth he; and thereupon cometh that diſtinction of *Caſtrenſe peculium*, Et quaſi caſtrenſe peculium, ſignifying thereby, that albeit Counſelloꝛs to the ſtate, Lawyers, and ſuch like be not actuall warriors, yet they are repreſentiuẽ warriors, and do no leſſe ſerue the Common wealth than they. The Souldiour riſeth betime in the morning, that he may goe ſoꝛth to his exploit, the Aduocate that he may pꝛouide ſoꝛ his Clyents cauſe, he wakes by the trumpet, the other by the cocke, he orde- reth the battaile, the other his Clyents buſineſſe, he taketh care his tents be not taken, the other that his Clyents cauſe be not ouerthrowne: ſo then eyther of them is a warrior, the one abꝛoad in the field, the other at home in  
the



the City. Beside Bartol treateth in that place, what things are bozne in Armes, eyther naturall, as beastes, birdes, fyshes, mountaynes, trees, flowres, sunne, moone, stars, or such like: or artificiall, not taken from thinges existent, as colours, simple and mixt, deuided by halfes or quarters, or by lines, direct, crosse, ouerthwart, or such other; then how each of these is to be carried, wherein art must followe nature, that euery thing figured, be bozne according to the nature of that which it doth figure, and not otherwise: and therefore as in Ensignes, flagges, or standerds, the speare or shaft goeth before, & the streamer or colours follow after, so the face of euery creature that is figured or described in the banner or hatchment, must looke vnto the shaft or speare; vntlesse a man beare two creatures, one looking toward the other, for then this obseruation hath no place, for vaine it is to coniecture where things are certein, otherwise it is the nature of the face to goe before, and the body to follow after: and the like reason is of the parts of euery creature which is likewise bozne in Armes, which are distinguished by before and behinde, whose site must be such, that the head looke to the speare, otherwise would it seeme to goe back like a monster: but if the forepart alone of any creature be bozne in a Scutcheon, as often it happeneth that men giue onely a Lion, Beare, or buls head, for their Armes, then must not the head directly looke vnto the shaft, but aside: further euery of these creatures, be so described in the coate as his vigo and generositie be best set out, whether it be a feirce or sauage beast, or a milde or gentle creature. But for colours his rule is, that the noblest colour be put in the first part of the field, howsoeuer the coate be deuided, quarter or pale. And of Colours the golden colour is the chiefest, as that which doth figure the Sunne, which is the fountaine of light, which is most acceptable to euery mans eye. The next is Purple or Red, which doth figure the fire, that is the highest & noblest of the foure Elements, and next the sunne it selfe in dignitie. The 3. is Blew, of the Veralds called Azure, & Ceruleus in Latin, which figureth the Ayre, which

is a clære and transparant body, and most capable of light, and commeth in nobility next after the fier. The 4. is white, which commeth nere to the Light, and therefore is more noble than Blacke, that draweth nere to darknesse, & therefore is the basest of all Colours. And for mirt colours, as euery one hath more or lesse of White or Blacke, so eyther they are nobler or baser in reputation or degree. And thus much in generall as concerning the knowledge of Armes.

Nedham 37.  
Hen. 6. fol. 21.

Now followeth what the Ciuile Law holdeth as concerning Princes, and other Honorable persons, and their successions and places, which a graue Judge of this land hath anciently acknowledged to belong vnto the Ciuile Law.

By the Ciuile Law, all power commeth from God, as the Scripture teacheth, and among powers the two greatest are the Empire, and the Priesthood; for as God hath ordeyned the one to rule the outward man, and to bring all his actions within the compasse of reason, & so to establish Common wealthes, and to order the same: So also hath he provided the other for the instruction of the inward man, and the planting of Religion among men.

ff. de leg. 2. l.  
ff. de legat. 2. l.  
C. 4. tit. 13.  
C. 1. tit. 3. l. 56.  
C. 1. tit. 1. l. 5.

By the Empire, I vnderstand not only the Empire of Rome (which sometimes bare rule ouer most part of the world, at the lest ten mightie Kingdomes, which now are growen into particuler Empires and Monarchies themselves) but also euery seuerall Kingdome, which acknowledgeth no other Emperoz than his owne Soueraigne; for howsoever they differ in name and title, yet is the office it selfe all one: For euery one of them is Gods immediat Vicar vpon earth in their owne kingdomes, for matters appertayning vnto Justice. Whereupon the Ciuile Law gines them verie honorable tytles, sometimes teaching them Gods vpon earth, for the great authoritie they haue ouer other men vnder God; sometimes Ministers of God, for the seruice they do God in their Common wealthes; sometimes most holie, and most Religious, for the care they ought to haue



haue about Religion, and correcting of those things which are done against the feare of God; for a king ought in all things to propound the word of God befoze him for his rule, and to follow the doctrine of the Apostles: sometimes they are called most milde, because a king in all the course of his life, but specially in matters of punishment ought to imitate the mercie and fauour of Almighty God.

Although the Emperoz or King be reckoned among his Nobilitie, because he should not be puffed up with the glozie of his place, and conceiue he were of a more excellent mould than the rest, when indeed we are all of one, & the selfe same clay: yet he is both by the ordinance of God & man (as the Apostle teacheth him) among them, that is one which is supreme Soueraigne aboue the rest, and whom they ought in all things to obey, so it be not against the Law of God, and common Justice, for himselfe is in steed of the whole Law; yea he is the Law it selfe, and the only interpreter thereof, as in whose breast is the whole knowledge of the same; which albeit the Doctors do hold with a qualification, as thereby vnderstanding, not only the Princes person, but also his Councelloz, both which put together, make up a perfect state of a Prince: yet soasmuch as all that benefit of wisdom and gouernment that cometh from them vnto the Common wealth, is principally deriued from the Prince, as from the head, who hath vouchsafed to make them as it were members of his body, and so by them to deriue the power of his gouernment, vnto all, it may be rightly said, that in the Princes breast, resteth the fulnesse of all knowledge, for the well ordering of his Common wealth; for what they see, they see for him, what they heare, they heare for his vse, what they vnderstand, they vnderstand to doe him seruice, and so consequently of the rest of the actions of the minde and body, they obey the Prince, as their Soueraigne: so then as the Prince hath the primacie in the gouernment of his Common wealth, and all those which gouerne vnder him, gouerne by, and for him, so also hath he the precedence, and preeminence, or sittings in all

C. 1. tit. 1. l. 5.

C. 5. tit. 4. l. 23.

L. fin. C. de verb. signif. C. de dignitat. l. 8. lib. 12.

1. Petri ca. 2. vers. 13.

Ab c. significat  
via est de peni-  
tentijs &c.  
C. 6. tit. 23. l. 19  
C. de testib. l. 1.  
omnium.Arist. primo  
Ethicorum.

assemblies befoze the rest, and such other as haue pcedencie or sorsitting, haue it by the Pzinces indulgencie.

C. 7. tit. 37. l. 3.  
in princip.

Next vnto the Pzince is his Quene, who shineth by the beames of her King, and hath the like prerogative as himselfe hath. After them comes next in place the Kings Children, because children in a sort are partakers of their Fathers dignitie: but yet among children there is a difference, that the male be preferred befoze the female, and among those which are males the eldest haue the preheminence in going, sitting, speaking, and other like matters of respect. After the kings Children follow in the next ranke Dukes, after them Marqueses, then Earles, fourthly Viconts, and last Barons; all which haue dignities eyther heritable, or graunted by the bountie of the Pzince, whereupon theyr nobilitie is founded, and whereby they only and no other are to be accounted Pæres of the land. Among these for curtesie sake are reckoned such as descend of Noble houses, euery one according to his degre, vntill the third generation: and the daughters of these great houses, so long as they marrie to any that are in degre of Pæres, reteyne theyr fathers dignitie, but if they marrie vnder the degre of Pæres, then they lose theyr fathers place, and follow the degre of their husband; which notwithstanding is in practize otherwise here among vs, but without any warrant of Law. The like is of the Widowes of the Pæres, who while they liue sole, and vnmarrried, reteyne the nobilitie of their husbands; but if they marry then they follow the condition of theyr second husbands, be it honozable, or otherwise.

L. 1. c. de dignitat. lib. 11.

L. Mulieres 13.  
c. de dignitat. li.  
12. c. de eques-  
stri dignitat. l.  
unica lib. 12.

Cuiacius Lib. de  
Fendis.

L. cum te. c. de  
Nupijs.

Next in place after Pæres come Knights, whereof Cuiacius following the moderne French Heraldrie, maketh three sorts; one whereof he calleth Cheualliers, the other Bannerets, the third Bachilers, but setteth downe no proper difference of the one from the other, and therefore I leaue that to be inquired of those, which shall be curious thereof. Among the Romanes for ought that I haue read, there was but one order of them, and they were next in  
degre



degree to the Senators themselves, as with vs they are to the Peeres.

Betweene Knights, and Doctors of the Law, hath ever bin question for precedency, since eyther of them hath bin in credit in Common weales, as may appeare both by the comparison that Tully maketh betweene Lucius Murena, a Knight of Rome, and Pub. Sulpitius a Lawyer, eyther of them standing for the Consulship, in his eloquent Oration made for Murena, and many disputes of Bartol and Baldus, arguing the case to and fro, which although be yet disputable in forreine Countries, where the Ciuile Law is in credit; yet here among vs where all preferment is taken from it, and the Professors thereof are shut vp as it were into a narrow corner of their profession, it is without controuersie, and the priortie thereof indubitable: but yet this is the resolution of those which are learned in this point, *Chassaneus de gloria mundi lib. 9.* that in such acts as concerne learning, a Doctor is to be preferred before a Knight, but in acts that concerne Military knowledge, a Knight takes place before a Doctor: but in other acts which are neyther proper to the one, nor to the other, First are preferred such Doctors as attend about the Prince; secondly such Knights as waite vpon the Prince; thirdly such Doctors as being not about the Prince, are excellent in learning; fourthly come Knights without any place of preferment; lastly Doctors of meaner gifts and place.

Although by the Ciuile Law there bee no Gentlemen of title vnder Knights, but all the rest went vnder the name of people, yet in other common wealthes there are, and with vs be, euen in this ranke, which haue names of preheminance, whereby they are in degree aboue the rest; as with the French there are les Gentilhomes, and le Gens de ordinances, and with vs are Squiers and Gentlemen, all which giue Ensignes, or coat Armour, and thereby are distinguished from the meaner people: in which respect Bartol calleth them Noble, but yet of a weake nobilitie, for that it hath no further prerogatiue *Bartol tractat. de Insignis.*

in it, then that it makes them differ from the baser sort of people.

Homer. Illiad.  
Plin. lib. 3.  
natural. histor.

Of these two sorts of Gentlemen with vs, the Squier hath the priority, who seemes by the common name we giue him in Latin, to haue had his origen, eyther for that he caried the Armour of the King, Duke, or other great personage, as we see not only in the holie Scriptures Saul and Ionathan, had their Armo<sup>r</sup> bearers, but in Poets and other prophane stories, Patroclus was Achilles Armour bearer, and Cleus great Alexanders: whercupon some write that *επαλτης* siue *επαλσιφους*, which is he whom we call Armiger in Latine, is a footeman, that with a speare, shield, or head-piece, followeth an armed Knight in battaile, or rather as some other suppose, it is the footman himselve armed in the field: howsoeuer the word be taken, this is sure, that these were men of good accompt in the old time, as those which won themselues credite out of warre, and so their estimation remained in their posteritie; and as those were in time befoze, so are these which are in our dayes, as descending for the most part from theyr worthy ancestors.

L. 1. c. de digni-  
tat. lib. 10. &  
12.

There is no dubbing or creating of these by the Princes hand, or him to whom the Prince hath giuen authoritie, as it is in the creating of the Nobilitie, and the making of Knights, but euery one whom the Captaine hath vouchsafed, that seruice, is by the seruice it selfe a Squier; and that not onely he which hath done the seruice in warre, but also such which haue done any equiualent seruice in peace, as Lieutenants, and Shirifes of Shires, and Iustices of Peace within their Countie: for euen in this as in other Promotions hath that distinction of the Law place, of *Castrensis peculij*, et quasi *castrensis*, wherby seruice of the Common wealth at home, is leuelled and made equall with that abzoade. Gentlemen haue theyr beginning either of blood, as that they are bozne of worshipfull varents, or that they haue done some thing worthily in peace or warre whereby they deserue to beare Armes, and to be accounted Gentl<sup>e</sup>.



gentlemen, for he is a gentleman who is commonly so taken and reputed.

And this is the last and lowest order of them to whom the Law doth allow any challenge of precedencie.

Now it followeth that I speake some something how great personages one succede in another in their places of honour.

And first, to begin with the Empire it selfe, as the greatest earthly dignitie vnder God, albeit in the beginning it were raised vp by no right, but by vsurpation, Iulius Cæsar changing the former gouernment of the State, and challenging to himselfe, the whole managing of the same; yet after it came to an orderly course, insomuch as he that had the present possession of it, disposed it to his best liking, by his last Will and Testament. So Iulius himselfe deuised it to Octavius his sisters son: and albeit that deuise toke not effect, by reason of the treason that was wrought against Iulius owne person, so that Octavius was faine to recouer it by another right, euen by the death of Lepidus and Antonius his colleagues in office; yet that very Will of Iulius gaue a pretence to Octavius, who after was called Augustus (because hee did increase the Empire with many worthy victories) to stand for the inheritance of the Empire, in consideration of which title the Senate and people of Rome more easily submitted themselves vnto his gouernment. Augustus in like sort bequeathed it to Tiberius, and Tiberius to Caius: and so it came from one to another, vntill some of them by crueltie and licentiousnesse of life, became so odious to God and man, that the people rose against them, and bereft them of that liberty, which they had prescribed in appointing of their Successors, and somewhiles themselves, and somewhiles the Soldiours made choise of whom they thought good, or by whom they thought best to be rewarded. And thus the right of Succession vnto the Empire was tost vp and downe many hundred yeares betwixt Inheritance, Bequest, and Election, vntill at the last, it came vnto that establied state, as now it is in, and settled Electors of the Empire, so often as it happened

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to be void. Succession in Kingdomes, in most part of the world, in former time hath bene, and at this day is by right of blood, (a few onely excepted, which are Elective, as the Kingdom of Poleland is at this day) and in Succession the eldest son taketh place before the rest; and if there be no heire male, then the eldest daughter succedeth in the kingdom, and her issue: for Kingdoms (as also succession in other dignities) are impartible. And yet Fraunce (to exclude Edward the third from the inheritance of the Crowne thereof, who descended of Isabell the sister of Charles the faire, and so was next heire male unto the kingdom of France) alledged for themselves the Law Salicke, pretending none which claimed by the woman, albeit he were the next heire male in blood, was to succeed, as long as there were of the male line alive, how far soeuer they were off in degree from the last king deceased. But this is but a mere device of the French, fathered upon some rotten Record of that part of their Nation, called Sali; of whom otherwise they haue nothing memorable to speake of, as being the basest Nation among them all, of whom they report their people to haue bene compounded: but this device serued their turne then, whether it were anciently inuented, or newly coyned. But howsoever they oppose themselves against womens government, as Bodine there contriman, hath of late stretched out the strength of his wit to deuise reasons against the government of that sex: certaine it is, that the Law of God hath allowed it, as it appeareth in the example of Debora, who being a Prophetesse governed Israell fortie yeares, and by her direction got the Israelites a mightie victorie ouer Sisera the captaine of the host of Iabon: and wee among other Nations, haue found by experience, gunaticotatry or womens government is nothing so vnfortunat, as Bodine would make vs beleue it is. For both in our late Quene, and also in her sister, (except onely the case of Religion, wherein she followed the error of the time, and was carried way more with zeale than knowledge, and thereby is more to bee pittied than to bee enuied) what is in their government, the wisest Man-Prince in the world

Bodin lib. 6. de  
repub.



wozd would not desire to bee in his owne Regiment: for what is either in their priuat carriages, (so you giue no eare to virulent and malicious tongues, who report surmises for substances, and tales for truths) or in their publicke gouernment, (so you lay not other mens faults to their charges) that any man can iustly blame: For that I may passe ouer the rest of their Heroicall vertues fit for women of their State (specially the late Quæne, who was peerlesse among all Quænes that euer went before her, and vnmatchable, as I verily doe beleue, by any that euer shall succeed her) as their magnanimitie whereby they subdued, not only their domesticall enemies, but vanquished euen their foraine foes, were their designements neuer so dangerous, not shewing any token of discouragement either in the treasonable attempts of the one, or in the malicious complotments of the other.

What an excellent work of hers was that, that then when all her neighbour Kingdomes round about her were drunke with the cup of the fornication of the whoze of Babilon, shee alone came out of Babilon, and so continued constantly to the end, mauer the threats of the red fierie Dragon, and the floods of water he cast out of his mouth after her: How excellent did she shew her selfe in those two vertues which doe chiefly preserue Princes States, that is, Mercie and Iudgement, the Records of her time do shew, so that I may spare to remember any by name, which happily would be not well taken.

And yet, truth it is, that mens gouernment is more agreeable to Nature than womens is, whom God in the beginning put in subiection vnder man, and who for the most part are by Nature weake in bodie, and thereby vnable to put in execution the great affaires of a Kingdom, and vnsetled in iudgement, and so hardly can determine that which is right, and settle themselves thereupon: yet by the numeration of certaine ill gouerning Quænes, to conclude a generalitie against all gouernment of women, is but an ill kind of arguing, for euen by the

like reason a man might conclude against Kings, of which sort, although there hath bin many good, whom God hath vsed as instruments to worke great good vnto people in euery kingdom, yet more of them haue bin euill, as the Stozies of euery country will shew; and to abridge God of his power, that he cannot as well gouerne by a woman as by a man, when it is his good pleasure so to doe, were great iniurie to God, and a great discredit to all woman kind: but to returne thither where I left.

In succession of Kings a question hath bene, where the King hath had sons, both before hee came to the Kingdome and after, which of them is to succed, he that was bozne before the Kingdome, as hauing the prerogative of his birthright, or he that was bozne after, as being brought into the world vnder a greater planet than the other, neither hath there wanted reason or example for each side to found themselves on: for Xerxes the son of Darius King of Persia being the eldest birth after his father was enthronised in the Kingdome, carried away the Empire thereof from his brother Artemines or Artebariones bozne before his father came to the royall possession thereof: so Arseces the son of another Darius bozne in the time of his fathers Empire carried away the garland from his brother Cyrus bozne before the Empire: so Lewes Duke of Millan bozne after his father was Duke, was preferred to the Dukedome, before his brother Galliasius bozne before the Dukedome. But these examples notwithstanding, and the opinion of sundry Doctors to the contrarie, common vse of succession in these latter daies hath gone to the contrarie, and that not without good reason: for that it is not meet, that any that haue right to any succession by the prerogative of their birthright (such as all elder brethren haue) should be despoiled thereof, except there be some euident cause of incapacitie to the contrarie.

Beside sundry contentions haue risen in kingdomes betwene the issue of the eldest sonne of the king dying before his father, and the second brother suruiuing the father, who should Raigne after the father, the Nephew challenging the same

*Herodot. lib. 4.  
Iustin. lib. 11.  
Plutarchus in  
vita Artaxerxis.*

*Guicard. l. 1.  
Histor.  
Blondus Decad.  
2. lib. 6.  
Mich. Reticus lib.  
2. de regeb. His-  
gar. Sigeb. in  
croni.*



same vnto him, by the title of his fathers birthright, and so by the way of representation; for the eldest son, euen the father yet liuing, beares the person of the father: how much then rather his father being dead: Whereupon the Law calls as well the sonne *Filiusfamilias*, as the father *Paterfamilias*, for that the son, euen during the fathers life, is as it were Lord of his fathers state: the other claiming as eldest son to his father, at the time of his death; vpon which title, in old time there grew controuersie betwene Areus the son of Acrotatus eldest son to Cleomines King of Lacedemon, and Cleomines second son to Cleomines, and vncle to the said Areus, but after debate thereof, the Senate gaue their sentence for Areus right, against Cleomines: beside Eunomus King of Lacedemon hauing two sons, Polydectes and Lycurgus, Polydectes dying without children, Lycurgus succeeded in the kingdom, but after that he vnderstood Polydectes widow had a child, he yeelded the Crowne to him: wherein he dealt far more religiously then either did king Iohn, who vpon like pretence not only put by Arthur Plantaginet his eldest brothers son, from the succession of the kingdom, but also, most vnnaturally, tooke away his life from him; or king Richard the third, who most barbarously, to come vnto the kingdom, did not only sleigh his two innocent Nephewes, but also defamed his owne mother, in publishing to the world that the late King his brother, was a bastard. Our Stories doe not obscurely note that controuersie of like matter, had like to growne betwene Richard the second and Iohn of Gaunt his vncle, and that hee had procured the counsell of sundry great learned men to this purpose, but that he found the hearts of sundry Noble men of the Land, (and specially the citizens of London) to bee against him; whereupon hee desisted from his purpose, and acknowledged his Nephewes right. Yet notwithstanding, when as Charles the second King of Sicill, departed his life, and left behind him a Nephew of Charles his eldest son, surnamed Martellus, and his younger son Robert, and the matter came in question which of them should succede, Clement the fifth gaue sentence for

*ff. de liberis & posthumis l. in suis.*

*Pausanias lib. 3. Historiarum.*

*Plutarch. in vita Licurg.*

*Bartol. l. si vna matre C. de bonis maternis primogeniti filii non excludit secundogenitum in regno.*

*Vicerius in vita Henrici 7.*

*Clem. pastoralis  
de re iudiciali.*

*Glanuill l. 7. c. 3.*

Robert the younger son of Charles deceased, against the son of Martellus, being Nephew to his Grandfather, and so caused the said Robert to be proclaimed king of both Exchels; which was done rather vpon displeasure that Pope Clement conceiued against the Emperour Frederick, than that there was iust cause so to doe. And yet Glanuill, an old reuerent Lawyer of this Land, and Lord chiefe Justice vnder Henry the second, seemeth to make this questionable here in England, who should bee preferred, the Uncle or the Nephew.

And thus much of succession of kings, wherein the eldest among Males hath the prerogative, and the like in Females, if there be no Male: for that a Kingdom is a dignitie vndiuisible, and can come but to one, bee hee Male or Female; for that otherwise great governments would soone come to small Rules and Territories.

And the like that is said of Kingdoms, is to be held of all Dignities vnder Kingdomes, where the eldest son is to bee preferred before all his other brethren, and they successively one before another, if there be no issue left of them that goe before; and the Male line is to be preferred before the Feminine, and the Feminine before all the rest of the kindred, so it be not a Masculine Feud, and the same intailed vpon the heire Male.

And thus far, as concerning the matters wherein the Ciuile Law dealeth directly or incidently within this Realme. Now it followeth, to shew how much of all those titles of the Canon Law, which haue bin before set downe, are here in practise among vs.

Of those Titles of the Canon Law, which before haue bene recited, some are out of vse here with vs in the singular or Individuum, by reason of the grosse Idolatry they did containe in them; as the Title of the authoritie and vse of the Mass, the title of the Masse, the title of Reliques & the worship of Saints, the title of Monks, and Regular Canons, the title of the keeping of the Eucharist, and Creame, & such other of like qualitie: but yet are retained  
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in the generall : so2 in stead of them there are substituted in their places holy worships, tending to the like end of godlinesse those other did pretend, but void of those superstitious meanes the other thought to please God by ; and so in stead of the Masse, hath come in the holy Communion ; and in place of worshipping of Saints, hath succeeded a godly remembrance, and glorifying of God in his Saints, and so of the rest whereof there is any right vse within the Church.

Some other are out of vse as well among the Ciuile as Criminall titles, because the matter that is therein treated of, is knowne notoriously to belong to the conuulsance of the Common Law at this day, as the titles of Buying and Selling, of Leasing, Letting, and taking to ffarme, of Morigaging, and pledging, of Giuing by deed of gift, of Detecting of Collusion and Cosenage, of Murder, of Theft, and receiuing of Theeues, and such like.

And yet, I doubt not, but euen these matters, as well Ciuile as Criminall, or most of them, were aunciently in practise, and allowed in Bishops Courts in this Land, among Clerkes, to the which I am induced by three reasons : First, that I find not only the foraine Autho2s of the Decretals, but also the domesticall Autho2s of the Legantines, being all most excellent wise men, as the Sto2ies of their seuerall ages do report, to haue inacted these seuerall constitutions, and to haue inserted them, not onely in the bodie of the Canon Law, but also in the bodie of the Ecclesiasticall Lawes of this Land ; and that some wise men, sundry years after their ages, did write and comment vpon the same, as things expedient and profitable for the vse of the Church, and the gouernment of the Clergie in those daies ; neither of which, I doe presume, they would haue done, if in those ages there had not bene good vse and free practise of them.

Secondly, that I find in the Code of Iustinian, by sundry Lawes, some of his own making, some other of other Emperors before his time, euen from the daies of Constantine the great,

great, bishops in their Episcopall audience had the practise of these matters as wel Criminal as Ciuile, and to that end had they their Officials or Chauncellores, whom the Law calleth *Ecclesiedici* or *Episcoporum Ecdici*, that is, Church Lawyers, or Bishops Lawyers, men trained by in the Ciuile and Canon Law of those ages, to direct them in matters of Judgement as well in Ecclesiasticall Criminal matters, as Ecclesiasticall Ciuile matters.

And that these, which now are Bishops Chauncellers, are the verie selfe same persons in Office, that aunciently exercised Ecclesiasticall Jurisdiction vnder Bishops, and were called *Ecclesiedici*, it may appeare by that which Papias, an old auncient Historiographer cited by Gothofred in his Annotations vpon the foresaid Law *Omnes* in the Code, and title *de Episcopis* and *Clericis*, and vpon the *S. Præterea* writeth of them, who saith thus, that *Ecclesiedici*, or *Ecdici* were those that were ayders and assisters to the Bishops in their Jurisdctions, not astrict or bound to one place, but euery where through the whole Diocesse supplying the absence of the Bishop, which is the very right description of the Bishops Chauncellers that now are; who for that they carrie the Bishops authoritie with them euery where for matters of Jurisdiction, and that the Bishop and they make but one Consistorie, are called the Bishops Vicars generall, both in respect their authoritie stretcheth it selfe throughout the whole Diocesse, & also to distinguish them from the Commissaries of Bishoppes, whose authoritie is onely in some certaine place of the Diocesse, and some certaine causes of the Jurisdiction, limited vnto them by the bishops, and therefore are

*Clem 2. ca. foraneos de rescript.* called by the Law, *Indices* or *Officiales foranei* as if you would say, *Officiales astricti cuidam foro diocesis tantum.*

So that it is a very mere conceit, that a certaine gentleman, very learned and eloquent, of late hath written, that Chauncellers are men but of late bystart in the world, and that the sloth of bishops hath brought in Chauncellores, whereas in very deed, Chauncellers are equall, or more equall in time to Bishops themselves, as both the Law it selfe, and

Stories



and Storics do shew: yea Chauncellers are so necessarie officers to Bishops, that euery Bishop must of necessitie haue a Chaunceller, and if any Bishop would seeme to be compleat within himselfe, that he needed not a Chaunceller, yet may the Archbishop of the Province wherein he is, compell him to take a Chaunceller, or if he refuse so to doe, put a Chaunceller on him: for that the Law doth presume, it is a matter of more weight than one man is able to susteine to gouerne a whole Diocesse by himselfe alone; and therefore howsoeuer the nomination of the Chaunceller be in the Bishop, yet his authoritie comes from the Law, and therefore he is no lesse accompted an Ordinary by the Law, than the Bishop is. But trueth it is, not the sloth of the Bishops, but the multitude and varietie of Ecclesiasticall causes brought them in, which could not be defined by like former precedents, but needed euery one almost a newe decision. And the cause why Princes in the beginning granted to Clergy men these causes and their Consistories, (for from Princes were deriued in the beginning all these authorities, as also the Religion it selfe is settled and protected in Kingdomes by Princes, before there can be had a free passage thereof) was one that the Clergie men thereby might not be drawen from their prayer and exercise of diuine seruice to follow matters of suites abroad: secondly that they were like to haue a more speedy and better dispatch and more indifferency before a Judge of their owne learning, than before a Judge of an other profession, for this is true, and euer hath bin, and I feare euer wil be vnto the end, that is said in the glosse, and is in common saw, *Laici opido semper infestisunt Clericis*: Lastly that Clerks suits & quarrels should not be diuulged and spread abroade among the lay people, & that many times to the great discredit of the whole profession, specially in criminall matters; wherein Princes aunciently so much fendered the Clergie, that if any man among them had committed any thing worthy death, or open shame he was not first executed, or put to his publike disgrace, before he was degraded by the Bishop, and his Clergie, and so

*Baldus l. ali-  
quando ff. de  
officio Procons-  
ulis.*

*Couar. lib. 3. va-  
riarum resolut.  
c. 20. num. 4.  
S. Broz. lib. 1.  
de vicario & pi-  
q. 46. num. 2. &  
12. & 13.*

*Hosiensis in  
summa de offi-  
cio Vicarij nu-  
mero 2. in fine,  
nominationem  
ab Episcopo, potesta-  
tem vero a iure  
recipiuntur.*

was executed, & put to shame, not as a Clerk, but as a lay malefactor; which regard towards Ecclesiasticall men, it were well it were still retained, both because the consideration thereof is reuerent & worthy the dignity of the Ministerie, whose office is most honorable, & also for that it is more auer-  
 cient than any Papisticall immunitie is.

The third and last reason that moues me that I should be-  
 lieue, that these Titles sometimes were here in exercise a-  
 mong vs in the Ecclesiasticall Courts is, that I find Glanvill,  
 who himselfe liued vnder Henry the second, and was Lord  
 chiefe Justice of England in his daies, sort to the Ecclesiasti-  
 call Courts the plea of Tencements, where the suit is be-  
 twene two Clerks, or betwene a Clerk and a Lay man, and  
 the plea is, De libera eleemosina feodi Ecclesiastici, et non pe-  
 titur inde recognitio, whether the frank fee be lay or Ecclesi-  
 asticall: where also is further added that if it be found by the  
 verdict of legall and sufficient men, that it is of Ecclesiasticall  
 fee, it shall not be after drawnen to lay fee, no though it be held  
 of the Church, by seruices thereunto due and accustomed: se-  
 condly whereas land is demaunded in marriage by the hus-  
 band, or the wife, or their heire, and the demaund be against  
 the giuer, or his heire, then it shal be at the choise of the de-  
 maunder, whether he will sue for the same in the court Chri-  
 stian or in the secular Court: For saith he, it pertaineth vnto  
 to the Ecclesiasticall Courts to hold plea of dowries, which  
 he calleth Maritagia, if so be the plaintife so make choise of  
 those Courts, for the mutuall affiance that is there made be-  
 twene the man & the wife, for marriage to be had betwene  
 them, & there is a dowry promised vnto the man by the wo-  
 mans friends, neither shall this plea be caried vnto the tem-  
 porall Courts, no though the lands be of Lay fee, so that  
 it be certein the suit is for a Dowry, but if the suit be against  
 a stranger, it is otherwise: thirdly the Kings prohibition for-  
 bidding the Clergie the dealing in many things which are  
 of lay fee, forbids them no one thing that is of Ecclesiasticall  
 fee, and to shew the Princes meaning precisely therein, that  
 it was not his intent by that Prohibition to restrain the  
 Ecclesiast

Glanvill lib. 12.  
 cap. 15. de Legi-  
 bus Anglie.

Idem lib. 13.  
 cap. 25.

Idem lib. 7. cap.  
 18.

Anno 24. Ed. 1.



Ecclesiasticall Judges for proceeding in matters of Ecclesiasticall law, he sets downe in very tearmes these words (Recognisances touching Lay law) as though he would hereby signifie to all men, that he would not touch matters of Ecclesiasticall law, which did then wholly & properly appertaine to the triall of the Christian Court, as hath bin before vouchered out of Glanvill; who for the place he then held, may be thought to haue knowen the Lawes of England, as then they stood, and the right interpretation thereof, aswell as any man then or now lyuing. And yet because there were some things of Lay law, which the Clergie then had cognisance of, as yet they haue in some measure; as causes and matters of Money, chattels, and debts, rising out of Testaments or Patrimonie, because he would haue whatsoever belonged to the Clergie to be vndoubted, excepteth them from those things which belong to the Crowne and dignitie, and leaueth them to the ordering of the Christian Courts; which is nothing else but an affirmance of that which Glanvill, and the rest of the auncient English Lawyers, Bracton and Britton said before.

Lastly the prouinciall Constitution *Aeternæ de poenis*, made in the dayes of Henry the 3. plainly shewes, that in those dayes all personall suits betwene eyther Clerke or Clerke, or betwene Lay men complaynants, and Clerkes defendants (for euer the Plaintife must follow the Court of the Defendant, which to the Ecclesiasticall men then was the Ecclesiasticall Court) were tried by the Spirituall Law, and not by the Temporall Law: which practise for that it doth accord with the iudgement of those auncient Lawyers that haue bin before cited, and with the Prohibition it selfe, which thererestraineth only calling of Lay men to make recognisances of matters of Lay law; it may be a great argument, that these things were of the Ecclesiasticall right in those dayes: from which I see not how the Ecclesiasticall Courts are false, for I see neither Law nor Statute to the contrarie, vnlesse perhaps they will say the Statute of the 25. of H. 8. cap. 19. toke the same away, as being hurtfull

25. H. 8. cap. 19.

to the kings Prerogatiue royall, & repugnant to the Lawes, Statutes, and Customes of this Realme; which whether they be, or be not taken away by the stroke of that Statute, I leaue it to men of better experience in these matters than my selfe to iudge.

But yet this I find by experience to be true, That where there are two diuers Jurisdictions in one Common wealth, vnlesse they be carefully bounded by the Prince, & an equall respect carried to both of them, so far as their places, and the necessarie vse of them in the Common wealth requires; as the aduancement of the one increaseth, so the practize of the other decreaseth; specially if one haue got the countenance of the State moze than the other: which is the only cause at this day of the ouerflowing of the one, and the ebbing of the other, but it is in his Sacred Maiestie to redresse it, not by taking away any thing from that profession that is theirs, but by restoring to this profession, that which is their owne; but hereof *ostendit bñ.*

For the rest of the matters that belong to the triall of the Ecclesiasticall Courts, some are acknowledged to be absolutely in vse, some other are challenged to be but in a certain measure in vse.

In absolute vse are those which neuer had any opposition against them, which almost are those alone which belong to the Bishops degree or order; for all things which come within the compasse of the Ecclesiasticall Law, are either belonging to the Bishops degree, or his Jurisdiction: To his degree or order belong the ordering of Ministers and Deacons, the confirmation of Childzen, the dedication of Churches and Churchyards, and such like, none of which haue been challenged at any time to belong to any other Law. The second sort is of them that belong to the Bishops iurisdiction, which is partly voluntarie, partly litigious: Voluntarie is, when those with whom the dealing is, stand not against it, but litigious it is, when it is oppugned by the one part or the other; Of this latter sort many things in sundry ages haue bin cald in question, but yet rescued and recovered againe by  
the



the wise & graue Judges themselves, who haue found the challenge of them to be vniust. But what doth belong to either of them in priuat, or what causes do appertaine to the whole Jurisdiction in generall, because they haue bin already particularly set downe by that famous man of worthy memory Doctor Cosin, in his learned Apologie for certeine proceedings in Ecclesiasticall Courts; I will not make a new catalogue of them, but send the Reader for the knowledge thereof vnto his Booke; but yet in my passage will I note which of them haue bin most chiefly oppugned, and as occasion shall fall out speak to them.

*Cosin in his Apologie part 1, c. 2.*

And thus much as concerning those parts of the Ecclesiasticall Law, which are here in vse with vs: Now it followeth to shew whereby the exercise of that Jurisdiction which is granted to be of the Ciuile and Ecclesiasticall cognizance, is defeated & impeached by the Common Law of this Land, which is the third part of this Diuision.

The impeachment therefore is by one of these meanes, by Præmunire, by Prohibition, by Iniunction, by Superedeas, by Indicauit, or Quare impedit: but because the sower last are nothing so frequent, nor so harmfull as the others, and that this Booke would grow into a huge volume, if I should prosecute them all, I will only treat of the two first, and put ouer the rest vnto some better opportunity.

A Præmunire therefore is a writ awarded out of the kings Bench, against one who hath procured out any Bull, or like processe of the Pope from Rome, or elsewhere, for any Ecclesiasticall place, or preferment within this Realme; or doth sue in any forreine Ecclesiasticall Court, to defeat or impeach any Judgement giuen in the kings Court, whereby the bodie of the offender is to be imprysoned during the kings pleasure, his goods forfeited, and his lands seized into the kings hand, so long as the offender liueth.

This writ was much in vse, during the time the Bishop of Romes authoritie was in credit in this land, and very ne-

25. Edw. 2.

27. Edw. 3. ca. 1.

38. Edw. 3. ca. 1.

6. 2.

7. Rich. 2. ca. 12.

13. Rich. 2. ca. 2.

2. H. 4. cap. 3.

cessary it was it should be so, for being then two like principal authorities acknowledged within this Land, the Spirituall in the Pope, and the Tempozall in the King; the Spirituall grew on so fast on the tempozal, that it was to be feared (had not these statutes bin prouided to restraine the Popes interprises) the spirituall Jurisdiction had deuoured vp the tempozall, as the tempozall now on the contrary side hath almost swallowed vp the spiritual. But since the forreine authoritie in Spirituall matters is abolished, and eyther Jurisdiction is agnised to be settled wholly, and only in the Prince of this land, sundry wise mens opinion is, there can lye no Pre-munire, by those Statutes at this day, against any man exercising any subordinat Jurisdiction vnder the King, whether the same be in the kings name, or in his name, who hath the same immediatly from the King: for that now all Jurisdiction, whether it be Tempozall or Ecclesiasticall is the Kings, and such Ecclesiasticall Lawes as now are in force, are called the Kings Ecclesiasticall Lawes, and the Kings Ecclesiasticall Courts; For that the King cannot haue in himselfe a contrarietie of Jurisdiction, fighting one against the other, as it was in the case betwene himselfe and the Pope, although he may haue diuersitie of Jurisdiction with in himselfe, which for order sake, and for auoyding of confusion in gouernment, he may restraine to certeine seuerall kinds of causes, and inflict punishment vpon those that shall go beyond the bounds or limits that are prescribed them: but to take them as enemies, or underminers of his State, he cannot; for the question here is not, who is head of the cause, or Jurisdiction in controuersie, but who is to hold plea thereof, or exercise the Jurisdiction vnder that head, the Ecclesiasticall or tempozall Judge. Neyther is that to moue any man that the Statutes made in former time against such prouisors, which bered the King, and people of this land, with such vniuall suits, doe not onely prouide against such processe as came from Rome, but against all others that came elsewhere, being like conditioned as they: for that it was not the meaning of those Statutes, or any of them, thereby to



to tare the Bishops Courts, or any Consistory within this land, for that none of them ever used such malepert sawsness against the King, as to call the Judgements of his Courts into question, although they went far in straying upon those things and causes, which were held to be of the Kings Temporal cognisance, as may appeare by the Kings Prohibition thereon framed. And beside the Archbishops, Bishops, and other Prelats of this Land, in the greatest heat of all this businesse, being then present in the Parliament with the rest of the Nobilitie, disauowed the Popes insolencie toward the King in this behalfe; and assured him they would & ought to stand with his Maiestie against the Pope, in these and all other cases touching his Crowne and Regalitie; as they were bound by their allegiance: so that they being not guilty of these enterprises against the King, but in as great a measure troubled in their owne Jurisdiction by the Pope, as the King himselfe was in the right of his Crowne, as may appeare out of the course of the said Statutes; The word (Elsewhere) can in no right sence be understood of them, or their Consistories: although some of late time thinking all is good service to the Realme, that is done for the advancement of the Common Law, and depressing of the Ciuill Law, haue so interpreted it, but without ground or warrant of the Statutes themselves, who wholly make provision against forreine authoritie, and speak no word of domesticall proceedings. But the same word (Elsewhere) is to be ment and conceiued of the places of remoue the Popes used in those dayes, being sometimes at Rome in Italy, sometimes at Auignon in France, sometimes in other places, as by the date of the Bulls, and other processe of that age may be seene; which seuerall remoues of his, gaue occasion to the Parliament of inserting the word (Elsewhere,) in the bodie of those Statutes, that thereby the Statutes providing against Processe dated at Rome, they might not be eluded by like Processe dated at Auignon, or any other place of the Popes aboade, and so the penaltie thereof towardes the offender might become

become boyd, and be frustrated. Neyther did the Lawes of this Land at any time whilles the Popes authoritie was in his greatest pride wythin this Realme, euer impute Præmunire to any Spirituall Subiect, dealing in anie Tempozall matter, by any ordinarie power wythin the land, but restrained them by Prohibition only; as it is plaine by the Kings Prohibition, wherein are the greatest matters that euer the Clergie attempted by ordinarie and domesticall authoritie, and yet are refuted only by Prohibition. But when as certeine busie-headed fellowes were not content to presse vpon the kings Regall iurisdiction at home, but would seek for meanes for preferment by forrein authoritie to controul the Judgements given in the kings Courts by procelle from the Pope; then were Premunires decreed, both to punish those audacious enterprises of those factious Subiects, and also to check the Popes insolencie, that he should not venter hereafter to enterprize such designements against the King and his people. But now since the feare thereof is past, by reason all entercourse is taken away betwene the Kings good Subiects, and the Court of Rome, it is not to be thought the meaning of good and mercifull Princes of this land is, the cause of these Statutes being taken away, the effect thereof shall remaine; and that good and dutifull subiects stepping happily awy in the exercise of some part of their Iurisdiction, (but yet without preiudice of the Prince, or his Regall power) shall be punished with like rigour of Law, as those which were molesters, grieuers, and disquieters of the whole estate. But yet notwithstanding the edge of those Premunires which were then framed, remaine sharpe and vnblunted still against Priests, Jesuits, & other like Kunnagates, which being not content with their owne natural Princes gouernment, seek to bring in againe, that and like forrein authoritie, which those Statutes made prouision against; but these things I leaue to the reuerend Iudges of the land, and others that are skilfull in that profession, onely wishing that some which haue most insight into these matters, would adde some light vnto them, that



that men might not stumble at them, and fall into the danger of them vnawares: but now to Prohibitions.

A Prohibition is a commaundement sent out of some of the Kings higher Courts of Records, where Prohibitions haue bin vsed to be graunted, in the Kings name, sealed with the seale of that Court, and subscribed with the Teste of the chiefe Judge, or Justice of the Court from whence the said Prohibition doth come, at the suggestion of the Plaintife, pretending himselfe to be grieued by some Ecclesiasticall or marine Judge, in not admittance of some matter, or doing some other thing against his right, in his or their iudiciall proceedings, commaunding the said Ecclesiasticall or marine Judge to proceed no further in that cause: & if they haue sent out any censure Ecclesiasticall or Marine against the plaintife they recall it, and loose him from the same vnder paine of the Kings high indignation vpon pretence that the same cause doth not belong to the Ecclesiasticall or Marine Judge, but is of the temporall cognisance, and doth appertaine to the Crowne and dignitie.

Prohibitions, some are Prohibitions of Law, some other are Prohibitions of fact.

Prohibitions of Law, are those which are set downe by any Law or Statute of this Land, whereby Ecclesiasticall Courts are interdicted to deale in the matters therein contained, such as are all those things which are expessed in the Kings Prohibition; as are also those which are mencioned by the second of Edward the first, where Judges Ecclesiasticall are forbid to hold plea of any matter contrarie to the effect, intent, or meaning of the statute of W. 2. Capite 3. The statute of *Articuli Cleri, Circumspecte agatis, Sylua Cedua*, the treatises *De Regia Prohibitione*, the Statute Anno 1. Edwards 3. Capite 10. ought else wherein the Kings Court ought to haue Jurisdiction. c. 13. 3. Edw. 6.

Prohibitions of fact, are such which haue no precise word, or letter of Law or Statute for them, as haue the other, but are raised vp by argument out of the wit of the Demiser. These, for the most part, are meer quirks and subtilties of

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law, and therfore ought to haue no more fauour in any wise, honourable, or well ordered Consistorie, than the equity of the cause it selfe doth deserue; for such manner of Shifts (for the most part) breed nought else but matter of veracion, and haue no other commendable end in them, though they pretend the right of the Kings Court, as those other Prohibitions of the law doe: but the Kings right is not to be supposed by imagination, but is to be made plaine by demonstration, and so both the Statute of the 18. of Edward the third, Capite 5. is, where it is provided no Prohibition shall goe out, but where the King hath the cognisance, and of right ought to haue; and also by the forenamed Statute of Edward the first, which forbids that any Prohibition shall bee graunted out, but vpon sight of the libell, and other warie circumstances in the said Statute expessed: by which it is to bee intended the meaning of the Lawgiuers was not, that euery idle suggestion of euery Attozney should breed a Prohibition, but such onely should bee graunted, as the Judge in his wisdom should thinke worthy of that fauour, and of right and equitie did deserue it: although (as I must needs confesse) the Statute is defective in this behalfe for to exact any such precise examination of him in these cases, as it is also in other points, and is almost the generall imperfection of all statutes that are made vpon Ecclesiasticall causes: but (I feare me) as emulation betwene the two lawes, in the beginning brought in these multitudes of Prohibitions, either against or beside law, so the gaine they bring vnto the Temporall Courts maintaineth them; which also makes the Judges they cesse not costs and damages in cases of Consultation, (although the statute precisely requires their assent and assignement therein) because they would not feare other men from suing out of Prohibitions, and pursuing of the same.

The Prohibitions of the law, as haue beene before shewed, are neither many, nor much repined at, because they containe a necessarie distinction betwene Jurisdiction and Jurisdiction, and imply the kings right, and subiectes benefit:



ness: but the Prohibitions of fact or of men, are both infinit and odious, for that there is, well nigh, no matter either Ciuile or Ecclesiasticall, bee it neuer so cleere or absolute, but they clog it and incumber it with some Prohibition; and the matter they conteine, is (for the most part) absurd and friuolous, as shall first appeare in Marine causes, and after in Ecclesiasticall matters.

For Marine causes, it is well knowne, that all such bargaines and contracts, or as it were contracts, as are made by any persons either in any foraine country, or any Hauen or creeke of the Sea, or any share thereof, as far as the greatest winter waue doth run out, or vpon any great riuer, to the first bridge next to the Sea, for any marchandize, ship, tackle, or other negotiation belonging to the Sea, or to any marchandize brought from beyond the Sea, is and ought to bee of the admirall cognisance, and so euermore hath bene since the Court of the Admiraltie was first erected: and yet the Common Lawyers to defeate the Ciuile Law of the tryall thereof haue deuised sundry actions, and among the rest, an action of Trouer, whereby they saine, that a ship arriued in Cheapside or some other like place within the citie, and there the Plaintife and Defendant meeting together, bargained vpon some marchandize, or other like sea-faring matter, by which fiction they pretend, the bargaine now is to bee tryed in the Common Law, and not by the Ciuile Law, as being done in the bodie of a Countie, and not vpon the maine Sea, or any other place subiect to the Admirall Iurisdiction.

But that this fiction, or any other like qualittied to this, should haue any such force as to worke any effect in Law, I will shew, first by the definition of a fiction, then by those things that are necessarily attendant thereon.

A fiction thereof is defined by Bartol (whom also the rest of the Doctors doe follow) to be an assumption of the Law vpon an vnt ruth, for a truth, in a certaine thing possible to

*I. si in qui pro  
emptore § 3.  
ff. de vsucapi-  
omb. & ibi Bartol.*

be done, and yet not done : vpon which fiction the Doctors hold there wait two things, the one is Equitie, the other Possibilitie. For first, vnlesse there be cause why, that which is not, should be fained to be, and that which is, should be accounted not to be, and that which is done in one sort, or at one time, or in one place, should be imagined to be done in another sort, at another time, and in another place, there is no reason a fiction should be admitted : for the Law alloweth no man to come to extraordinarie remedies, but where ordinarie remedies faile : and therefore if that which is in con- trouersie may be obtained by any other meanes than by a fiction, a fiction is not to be affozded : but if ordinarie means cannot be had, then fictions may be entertained to supply the defect of the ordinarie meanes, that thereby, although the truth be otherwise, yet the effect of the Law may be all one.

*L. in causa. ff. de  
munerib.*

*L. qui in utero  
& penult de  
statu hom. ff.*

*L. L. si filius ff.  
de sum. & legat.  
l. 2. l. 3. l. 4. C.  
cod. l. Galus 29  
§ & bene & §  
videndum ff. de  
liberis & posthu-  
mis Scum filius  
Inst. l. de hered.  
ab. nte. ato.  
L. verine est §  
vl ff. pro socio.  
L. action. Spub-  
licatione ff. cod.  
L. absente. ff. de  
verboru signifi-  
cat.*

*L. lege Cornel ff.  
ff. de testamen-  
tis.*

So then the Law faineth an infant not yet borne, to be borne for his benefit, for that happily without that fiction, the poore infant should be remedlesse of his filiall portion, Legacie, or other right in conscience due vnto him: so Nephewes and Nieces succeed together with their Uncles and Aunts in their Grandfathers and Grandmothers goods, for such portion as should haue come to their parents, if they had liued; for that the Law presumeth them to represent the person of their parents: so he that is dead, is fained to be alieue to many constructions in Law, speciall if many of his equals in age, be alieue at the time that hee is fained to be alieue: so he that is alieue and is in captiuitie, for the vpholding of his will which he made in libertie, is fained to be dead the houre before he became captiue: so he that is obstinat and will not appeare in Iudgement, being lawfully called therto, is fained to be present, that neither himselfe should take benefit out of his obstinacie, neither his aduersarie hurt by his absence and iniurie. Infinite more examples might be brought of this sort; but it would be too long to run thorough them all, and this shall suffice to haue shewed that the Law approoueth fictions, but where there is equitie for it, and the Law it selfe other



otherwise cannot haue her effect. And as the Law cannot proceed to a fiction without equitie, so neither can it faine any thing that is impossible, for Art euermore followeth Nature; and therfore if a man would faine disproportionable things, such as the Painter did in Horace, who made Boares wal- low in the waues of the Sea, and Dolphins wander in the woods; these fictions in no sence can be admitted, for that they are such as neither nature nor reason can brooke. In like sort, if a man would faine one to liue, who were dead two hundred yeares since, so that it were not possible, that he or any of his equals should liue at that age, this would not hold in Law, for that it is aboue the age the Law doth presume any man may liue by Nature; although the Law doth presume such as dye in war for defence of their country (for the better encouragement of those that are alieue, to venter themselves in like seruice for the common wealth) to liue for ever; because their fame doth flourish for ever: and vpon like reason the Law will not suffer any person to adopt another for his child, who is either elder or equal in age vnto himselfe, or is not so far vnder his yeares, as by course of Nature he might bee his naturall child indeed: so much the Law detesteth impossibilitie, that it will not suffer a man to faine that which in common Sence and Nature might not be true indeed.

Now, if these things be true, as in all reason and shew, by former precedents they appeare to be true, I would gladly see how actions of Touer, (whereby the Common Lawyers translate vnto themselves matters of Marine triall) if they be squared to these Rules of fictions, can be maintained: for first to speake of equitie, which the Law requires in these manner of proceedings, what equitie can it be to take away the triall of such businesse as belongeth to one Court, & to pul it to another Court; specially, when as the Court from whence it is drawne, is more fit for it, both in respect of the fulnesse of knowledge that that Court hath to deale in such businesse, and also of the competencie of skill that is in the Judges and professors of those Courts, correspondent to

these causes, more than is in the Judges and professors of the other Courts, for the deciding and determining of these matters. For, albeit otherwise they are very wise and sufficient men in the vnderstanding of their owne profession, yet haue they small skil or knowledge in matters pertaining to the Ciuile profession: for that there is nothing written in their booke of these matters, more than is to be gathered out of a few Statutes of former time, whose drift was not to open any doore vnto them, to enter vpon the admirall profession, but to preserve the Kings Jurisdiction from the Admirall inuichment, as may by the said Statutes appeare; whereas contrarily, the Ciuile law hath sundry titles included in the bodie thereof concerning these kind of causes; whereupon the interpreters of the Law haue largely commented, & others haue made seuerall Tractats thereof: So that, by all likelihood, these men are more fit and better furnished to deale in this businesse, than any men of any other profession, as hauing, beside the strength of their owne wit, other mens helps and labors to rely vpon.

Besides, this businesse many times concerns not only our owne countreimen, but also strangers, who are parties to the suit, who are borne, and doe liue in countries ordered by the Ciuile Law, whereby they may be presumed they haue more skill and better liking of that Law, than they can be thought to haue of our Lawes and our proceedings: and therefore it were no indifferencie to call them from the trial of that Law, which they, in some part know, and is the Law of their country (as it is almost to all Christendome beside) to the tryall of a Law which they know in no part, & is more sovraine vnto them; specially when the Princes of this Land haue aunciently allowed the Ciuile Law to bee a Common Law, in these cases, as well to their owne subjects, as it is to strangers.

Further, the auocating away of causes in this sort from one Jurisdiction to another, specially when the cause hath long depended in the Court from whence it is called, insomuch as now it is ready to sentence, or rather is past sentence, and  
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stands at execution, cannot be but great iniurie to the subject after so much labour lost, and money spent in waste, to begin his suite anew againe: which is like to Syfiphus punishment, who when he hath with all his might, forced his stone vp to the top of the hill, and so is (as himselfe hopes) at an end of his labour; yet the stone rowles downe againe on him, and so his second labour (his strength being spent with the toile of the first) is more grievous than the former was: which being semblably true in a poore Clyent, who hath his cause in hearing, there can bee no equitie in this fiction, whereby a cause so nere ended, should againe bee put vpon the An- nill, as though it were still rough worke and new to bee begun.

And surely, as there is no equitie in it, so there is no possibilitie such a fiction should be maintained by Law; for that it hath no ground of reason to rest his fete on. For if this be graunted, that such a fiction by Law may be made, then one of these absurdities must needs follow, either that a ship may arriue in a place where no water is to carrie it, or if that it arriue according to the fiction, either the people, their houses & their wealth shall be all ouerwhelmed in the water, as the world was in Noahs floud, and Deucalions Deluge, and so no bodie there shall be left alieue to make any bargaine or contract with the Mariners and shipmen that arriue there; or that the people that dwell there shall walke vpon the water, as people doe on land, which Peter himselfe was not able to doe, but had suncke, if Christ had not reacht his hand vnto him, and therefore far lesse possible for any other man to do. So that it may be wel said (these things standing as they do) no such fiction can hold, and that no action can be framed vpon it; for as there is no Obligation of impossible things, so there is no Action of things that neither Nature nor Reason will afford to be done: neither is it to the purpose that the maintainers of these fictions doe say, that in this case, the place where the contract is made is not considerable, which I take to be far otherwise; for that, when that themselves will conuey a Marine cause from the Sea vnto the Land, they will  
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lay it to be done in some speciall place of a Countie, bee the place neuer so vnproper for such an action: for that the foundation of these actions, is the place where they were done, as namely that they were done in the bodie of such a Countie, or such a Countie, and not vpon the maine sea, or beneath the lowest bridge, that is vpon any great riuier next the sea. And therefore in two emulous Jurisdictions, when they are so deuided, as that one is assigned the sea, the other the land, the place of the action can in no sort be suppressed, and another supplied in the roome thereof: *Quod enim una via prohibetur, alia via non est permittendum, & quod prohibitum est directo, prohibetur etiam per obliquum*: for if this were graunted, then matter enough would be offered to one Jurisdiction to deuour vp the other, and the Law would be easily eluded: which to restraine either of these Jurisdictions to their owne place, and to prouide that one in his greatnesse doe not swell vp against the other, hath set either of them their bounds and limits, which they shall not passe: which, as it is the good prouision of the Law, so ought either Jurisdiction in all obedience to submit it selfe therunto, for that the diminishing of either of them is a wrong to the Prince from whom they are deriued, who is no lesse Lord of the Sea than he is King of the Land: and therefore, in no sort, such libertie must bee allowed to the one directly or indirectly, as that it should bee a spoyle vnto the other; which would easily come to passe, if when as the law alloweth not any man to sue a Marine by the ordinarie course of the lawes of this land, yet a man will follow it by an extraordinarie. But where there is an vniuersitie of Jurisdiction, as that it is all by sea, or all by land, there may a thing be fained to be done in one place, that was done in another place, without any mans prejudice, for that in this case, the place is not trauersable (so it be not in Criminnall matters where time and place is required, that the accuser doe not wander from place to place with the iniurie of the accused) for howsoeuer the place and the action is altered, yet the truth of the cause remaineth one and the selfe same still: and so far as concerning actions of Trower in Admirall causes.



causes. Now it doth follow that I should speak of like prejudices that grow to the same by actions of Trespas, but those will I passe over, for that in so small a Treatise as this is, I cannot go over all: and therefore will I only put the Reader in mind, that there are more deuises rising out of the Common Law, that infest the Admiraltie than one. But now to Wills and Testaments wherein they are impeached.

For matters of Wills and Legacies, they are so proper to the triall of the Ecclesiasticall Law of this Realme, as the professors of the Common Law themselves, do oftentimes confesse and say, they haue no more to doe therewith, than the Ciuilian hath to doe with the knowledge of the matters of Franktenement: and yet euen these matters of Testaments & Legacies, although Prohibitions be not so frequent in them, as they are in the rest of Ecclesiasticall causes, yet they are not quite void of them, and that in some points, wherein the verie life & essence of a Will doth stand.

For whereas the auncient Romanes, knowing how subiect matters of Wills are to forgery & corruption on the one side, and suppression & concealment on the other side, to meet with all craft & subtilty whatsoeuer, which might seize on them, did most carefully prouide, that there should be seuen witnesses at the least, present at the making of euery Will & Testament, except it were in time of some generall plague or sicknesse, when so many Witnesses could not conveniently be had together for feare of infection, or if it were in the Countrey, where there are small multitude of people, and that those witnesses should be particularly required to that purpose; with diuers other obseruations and circumstances tending all to the safe and sure making thereof: which the Ecclesiasticall Law altered afterward in sundry points, for that many true Wills were many times ouerthrowen for want of those precise solemnities, & reduced the whole number of those seuen witnesses, vnto two only agreeably to the Law of God, & the Law of Nations, where that number of witnesses is allowed, as competent to proue any matter, so that the same witnesses be honest & credible persons, such as

whose faith is not doubted of. The Common Lawyers, because themselves in sundry matters very dangerously many times admit one witnesse, & giue him full credit, and that in matters of great waight & importance; (as though all should be squared to their rule, and framed to their compasse) If an Ecclesiasticall Judge in the probate of a Will, contrarie to the rules of his owne Law, will not admit the testimonie of one witnesse, they forthwith sling out a Prohibition against him, as though he had done an offence against the Crowne and dignitie, in that he doth not allow those number of witnesses in the Probate of a Will, that the Common Lawes of this land allow almost in euery matter.

For aunswere to which, if I should alleage the precise forme of the Ecclesiasticall Law, which to the essence of a will requireth this number of two witnesses, or else holdeth it not for a Will (but in cases inter liberos, & ad pios vsus, where the only hand of the Father or Testator without witnesses serueth for a Will, so the same be knownen to be the Testators owne hand, or so proued by comparison) I would think to wise men I had said sufficiently; but I will not rest hereupon, but will conuince themselves, by themselves: for, doe they I pray you in their owne proceedings, where a Law or Statute requires more witnesses than one, content themselves with one witnesse alone? yea, doe they not in all cases where a certaine number of witnesses are appointed to proue a fact by Law or Statute, furnish the cause with so many witnesses as the case desires, or else doe they not accompt the proceeding void? And will they think themselves so precisely bound to the keeping of the letter of the Common law, and will they not suffer the Ciuilian in like maner to cleaue fast to the obseruation of the Ciuile Law, especially when it hath the consent of the Law of God, & the Law of Nations, and is his Maiesties Ecclesiasticall Law of this land, as well as the other is his Temporall Law of the same?

I confesse it may be true many times, which one man saith, specially when there concur therewith many great and violent presumptions, and the party that reporteth it is of good credit,



credit, but dangerous it is to open this gap to the malice of men, for euen so, many things shall be obtruded to the Judge for trueth, which are stark lyes, and many things shall be pretended to be gold in shew, which in p<sup>ro</sup>ofe and p<sup>ra</sup>ctize will be found to be no other thing, but meere dross. And therefoze well decreed the Empero<sup>r</sup> Constantine, that no one mans testimonie should be heard, though he were neuer so great a man in Court.

*L. iurisurandi.  
S. Simili modo.  
C. de Testib<sup>us</sup>.*

But perhaps some man will say, if credit shall not be giuen oftentimes to one mans testimonie, much wickednesse will passe away unpunished: for reply to which I aunswere, it is better to let a bad man scape, than to punish a good, and although it be true, if a man may excuse himselfe by deniall, no man will be found guiltie; so also it is true on the other side, if it be ynough to condemnation to be charged by one man alone, without any other witnesses, no man shall be innocent, and therefore the admittance of one witnesse in causes, and the p<sup>ro</sup>ceeding thereupon to iudgement is verie dangerous.

An other like bar to this they lay in against Ecclesiasticall p<sup>ro</sup>ceedings in matters of Testament; whereas an Ecclesiasticall Judge p<sup>ro</sup>ueth a Will, wherein are manno<sup>r</sup>s, lands, tenements, and other like hereditaments bequeathed, challenging this also to be of the Crowne and dignity, as though the Ecclesiasticall Judge thereby tooke vpon him to decree which lands were deuisable by will, and which not, or would by his p<sup>ro</sup>bat adde a strength vnto the Will, to make the deuise good or bad, whereas on the contrarie part the Ecclesiasticall Judge by this act doth only testifie, that such a person made such a will, & that the same was p<sup>ro</sup>uod befoze himselfe vnder his Teste, for his last will & testament: but for the validitie of the Will it selfe, and the Legacies & deuises therein, whether they were of lands or tenements, or of goods or chattels, the p<sup>ro</sup>bat it selfe worketh nothing, but leaueth that to the Law, Common or Ecclesiasticall, according as the bequest belongeth to either of them, whether it be good & vailable in Law, or no: for it oftentimes falleth out, notwithstanding the

Will be lawfully proued before the Ordinarie, yet the bequests are not good, eyther in respect of the person to whom the bequests are made, or in respect of the thing that is not deuisable in all, or in part; as by the Common Law, lands in Capite cannot be deuised, more than for two parts, but in Socage the deuise is good for all; And by the Custome of the Citie of London, & some other places of the land, a man can bequeath no more than his deathes part, and if he do, his bequest is void for the rest; but in other places of the land a man may bequeath all. By the Ciuile Law a man can bequeath nothing to a Traytor, or an Hereticke, or an vnlawfull Colledge, or Companie (vnlesse perhaps it be for the alimient, or maintenance of them in extreame pouertie, that they dye not for hunger, which is the worke of charitie) and if he doe, the legacie thereof is void to all intents & purposes. So then, the Probate of the Ordinarie in matters of land, neyther helpeth, nor hindreth the right of the deuise it selfe, but is a declaration only of the dead Mans doome vttered before such, and such witnesses: which taketh his strength not so much from the Probate, as from the Law, and is testified only by the Probate, that the same was declared by the Testator, in the presence of the witnesses therein named, to be his true & Last Will. So that no man herein is to be offended with the Ordinarie, as presuming of a matter not appertaining vnto him: for this testification in all Law & conscience doth belong vnto him, to giue allowance so far vnto the defuncts Will, as it is auouched before him to be his last act and deed in that behalfe: but rather they are in this case to thank the Ordinarie, that he by that act of his hath preserved the memorie of that, which otherwise perhaps would haue bin lost & perished, to the great hurt of the Common wealth, and others which haue priuate interest therein.

Of all matters that appertain to the Ecclesiastical Courts, ther is no one thing that the Princes of this land haue made more carefull prouision for, since there was any Church government in this land, than that all maner of Tythes due by the word of God should be fully & truly paid vnto their Pa-  
rish



rish Churches where they grew, & if they were denied should be recovered by the Law of holy Church. For first before the Conquest, king Athelstone made a Law, that euery man should pay his Tythes to God, in maner as Iacob did, who made a vow to God, If God would bring him back againe to his countrie, he would when he returned home, pay tythes to God, of all that God should giue him: the like did king Edgar, & king Edmund, commaunding that those which wilfully refused to pay their tithes, should be excommunicated.

*Polychronicon.*

William Conqueror, (as Roger Houenden reporteth) in the 4. yeare after his conquest, hauing got some time of rest from warre, & settling of rebellious spirits, who kicked at his gouernment at home, entred into a consideration of the well ordering of the Church, and Common wealth by wholesome Lawes: & therefore by the aduise of his Counsell, let call all the great Prelates & Potentates of this Land, with twelue other sufficient men of euery Shire experienced in the Lawes and customes of the Land, that he might by them learne by what Lawes & customes the land was gouerned, before himselfe came to the Crowne thereof; straitly charging & commaunding them vpon his high displeasure, they should make true report to him therof, without adding any thing thereto, or taking any thing therefro: who beginning of the Lawes of holie Church, because by it, the King and his throne are established, among other Lawes and liberties of the Church, recorded this for one, which I will verbatim set downe in Latin, as it is penned by the Autho<sup>r</sup>.

*Houenden part.  
2. cap. de Decimis ecclesie.*

De omni Annona, decima garba est Deo reddita, & ideo reddenda: Si quis gregem Equarum habuerit, pullum reddat decimū, qui vnam tantum vel duas habuerit, de singulis pullis singulos denarios prebeat. Similiter qui plures Vaccas habuerit, decimum vitulum, qui vnam vel duas de singulis vitulis singulos denarios; & qui caseum fecerit, det decimū Deo, et si non fecerit, lac decima die. Similiter Agnum decimū, vellus decimū, Butyrum decimum, Porcellū decimum. De Apibus verò similiter, decimū commodi, quinetiam de bosco, de prato, de aquis, de molendinis, & viuarijs, piscarijs, virgultis, & hortis,

& negotiationibus, & omnibus rebus quas dederit Dominus decima pars ei reddenda est, qui nouem partes simul cum decima largitur. Et qui eam detinuerit, per iustitiam Epi, & Regis si necesse fuerit ad solutionem arguatur. Hæc enim S. *Augustinus* predicauit & docuit, et hæc concessa sunt a Rege, Baronibus, & populo. Sed postea instinctu diaboli multi eam detinuerunt, & Sacerdotes negligentes non curabant inire laborem ad perquirendas eas, eo quod sufficienter habebant vitæ suæ necessaria. Multis enim locis sunt tres vel quatuor Ecclesiæ, vbi tunc temporis vna tantum fuit, & sic ceperunt minui.

This Augulline to whom the Conqueror here referreth himselfe, was Augustine the Monke, whom Gregory the great about the yeare of our Lord God 569. sent here into England, to reestablish the Faith decayed by the Saxons; who set down sundry ordinances for the Church, & framed it in vniformitie of Prayer & government to that, as then was vsed in the Church of Rome: but long before Augustins time, as it may by our Stories appeare, (even in the daies of king Lucius, who sent to Elutherius a Bishop of Rome, for learned men to instruct him and his people in the Faith, which was about a hundred and fortie yeares after the Ascention of our Lord Iesus Christ) the Faith of Christ was here preached in Brytaine, and fiftene Archbishops are by our Stories reported, one to haue succeeded an other in the See of London, before the irruption of the Saxons into this land; All which time it is not like the Churches of God that were in the land, were void of this prouision for the Ministerie, so that I assure my selfe the payment of Tythes was far more auncient, than the time of Augustine; albeit the Conqueror citeth there the authoritie of Austen, rather than any former precedent of the Britains, both for that the doctrine of Austen was better knowen vnto the Saxons, among whose aunccestors Austen taught & gouerned as an Archbishop, than any of the Fathers of the Brytish Church, to whom the Saxons were enemies, and their tongue altogether vnknown vnto them; and beside, for that this doctrine of Austen, concerning

Fisherward, lib.  
vico.

Iselin of Furnes in his booke  
of British Bishops.

Marianus Scotus.



ning Tythes, best suted with the generall custome that was then vsed thozoughout all Europe in paying thereof.

The next Prince after William Conqueror that ordered any thing about payment of Tythes, soz ought that I haue read to the contrarie was Edward the first, who at the petition of the Clergie, stablished the Articles of the Clergie, which his sonne Edward the second confirmed by his Letters patents vnder his great Seale, and by consent of Parliament, at the petition of the Clergie in the ix. yeare of his Raigne.

In Edward the thirde time, writs of Scire facias were graunted out of the Chauncerie, to warne Prelates & other Clerks, to aunswere soz Dismes there; but after the matter was well vnderstood by the king, the parties were dismissed from the Seculer Judges, soz such maner of pleas, sauing to the king his right, and such as his Ancestors had, and were wont to haue of reason. *An. 18. Ed. 3. cap. 14.*

During the Raigne of Richard the second, Parsons of holie Church were drawn into seculer Courts soz their owne Tythes, by the name of goods taken away; And it was decreed by the King that in such case the generall auerment of the plaintife should not be taken, without shewing specially how the same was his Lay cattel. *An. 1. Rich. 2. cap. 14.*

By the Statute of the first of the same king cap. 14 it is acknowledged, that the pursuing soz Tythes, of right doth, and of old times was wont to pertayne to the Spirituall Court, and that the Judges of holie Church only haue the cognisance in these matters.

By the Statute of the 15. of Edward the third, it is ordered, That Ministers of holie Church, neyther soz money taken soz the redemption of corporall penance, noz soz prowe and accompt of Testaments, noz soz trauell taken about the same, noz soz solemnitie of Marriage, noz soz any other thing touching the Jurisdiction of Holie Church should be apprehended, or arrested, or driuen to answere the kings Iustices, or other ministers, & thereupon they should haue writs in the Chauncery, to the Iustices when they demaunded them. *15. Edw. 3.*

In the

2. Hen. 4.

In the second yeare of Henry the fourth, the Religious of the order of the Cistercians, that had purchased Bulls from the Pope to be discharged of the paiment of Tythes, were by act of Parliament reduced to that state they were in before.

5. Hen. 4. ca. 11.

In the 5. yeare of the same King it was ordered, That all Farmers, and Occupiers of any lands or possessions belonging to any Fryers Aliens, should pay all maner of Tythes due to Parsons and Vicars of Holie Church, in whose parishes the same were, as the Law of holy Church required, notwithstanding the same were seised into the K. hand, or any Prohibition were made, or to be made to the contrary.

About the 7. yeare of the same king, such Religious persons as had purchased Bulls from the Pope in the dayes of Richard the second, to be discharged of Dismes pertaining to Parish Churches, Prebends, hospitals, or vicarages, not put in execution, were forbidd from that time forward, to put them in execution, or to purchase any other in time to come.

27. Hen. 8. cap.  
20.

After king Henry the eight had dissolued the Monasteries, and other like Religious houses, and sold the Churches and Tythes therto belonging to Lay men, (who before that time were not capable of the same; insomuch as after the dissolution, when the Purchasers demaunded the same, they were denyed to hold plea therof, by reason of their incapacitie) a Statute was made in the 27. yeare of the same king, whereby all Subiects of the kings Dominions, were to pay theyr Tythes, and other dueties of Holy Church, according to the Ecclesiasticall Lawes, & ordinances of the Church of England, and after the laudable vses & customes of the Parishes and places where they dwelt, or occupied lands, and the same to be sued for before the Ordinary, or some other competent Judge of the place, according to the course & proceffe of the Ecclesiast. Courts of England: which statute because it took little effect, by reason of the obstinacy of the people in yeelding these dueties to the Laitie, who had purchased them, & that the said Purchasers could neyther by the order or course of the Ecclesiasticall Lawes, sue for them in any Ecclesiasticall Court of this land, neither was there found any remedy in the



the Common Law of this land, whereby they might bee relieved against them that wrongfully detained the same. In the 32. following another Statute was made, wherein it was enacted that all & singuler persons of this Realme, and other of the kings dominions, of what state, degree, or condition soever they were, should fully, truly, and effectually divide, set out, yeeld, and pay, all and singuler their Tithes and Offerings, to the owners, proprietaries and possessors of Parsonages, Vicarages and other Ecclesiastical places according to the Lawfull customs and usages of the Parish and places where such Tithes or other duties rise and grow due. And in case where any are wronged and grieued, being either an Ecclesiastical or lay person, for the wrongfull detaining or withholding of the said Tithes or offerings, or any part or parcell thereof, the same to haue full power and authoritie to conuent the same person or persons so detaining the same, before the Ordinarie or other competent Judge of the place, where such wrong was done: and the same Ordinarie or competent Judge to haue power, by vertue of the said Act, to heare, decide, and determine the same by definitive sentence, according to the course and proceeding of the Ecclesiastical law, without reseruatiō of any right to the Temporall Judge to giue remedie by any suit or action for the recovery of the same; saving in case where an inheritance or freehold in the premises is claimed, and the person claiming, is disseised, despoiled, and put from the possession of the same, in which cases only, the Statute alloweth the Temporall Judge to take knowledge, and that onely for the regaining of the right and the possession of the inheritance so lost.

After the decease of king Henry, king Edward his sonne tendering in like sort the state of the Clergie, the benefit of his subiects, and the practise of the Ecclesiastical Courts of this Land, made a Statute, whereby he did not onely ratify, confirme, and allow such statutes as his father had formerly made, but did further order, that euery of the kings subiects from thenceforth should iustly and truly without fraud

or receipt set out and pay all manner of prediall Tythes in their proper kinde, as they did rise and happen, in such manner as had bene paid within the fortie yeares next before the making of that act, or of right or custome ought to haue bene paid, with certaine forfeitures and penalties, as well against them which carried away any prediall Tythes, before the tenth part thereof were iustly diuided from the same, or otherwise agreed for with the owner thereof; as also against those that did let or hinder the owner thereof, his deputie or seruant to view, take, or carrie away the same. Inacting further that the party so subtracting or withholdyng any of the Tythes, obventions, profits, commodities, or other dueties aforesaid, might or should be conuented or sued in the kings Ecclesiasticall Court, by the party complainant, to the intent the kings Ecclesiasticall Judge might then and there determine the same, according to the kings Ecclesiasticall Lawes. And that it should not be lawfull for the Parson, Vicar, or any other owner or farmer thereof contrary to the same act to conuent, or sue any withholder of Tythes, or any other like dueties, before any other Judge than Ecclesiasticall; excepting only out of the said Statute things contrarie or repugnant to, or against the effect and meaning of the Statute of Westminster the second, the fifth Chapter, the Statute of *Articuli Cleri*, *Circumspecte agatis*, *Sylua Cedua*, the treatise *De Regia Prohibitione*, matters against the Statute of *Anno primo Edwardi primi*, *Capite decimo*, and such other matters beside, wherein the Kings Court of right ought to haue Jurisdiction.

Notwithstanding all which good prouision of ancient kings before the Conquest, and moderne kings since the Conquest, for the assuring of the suite of Tythes to the Ecclesiasticall Courts onely, and the continuall possession that the Ecclesiasticall Courts haue had of the same, deduced from so ancient time as hath bene before shewed, and so often obtained in contradictorie iudgement, as the consultations thereupon graunted doe testifie: yet sundry men in sundry ages, of this Land haue by wenchies and subtil deuises (which are odious in Law, and are by all godly and wise Judges by all possible meanes



meanes enermoze to be restrained) raised by matter out of the said statutes themselves, contrarie to the true sence and meaning thereof, to draw the tryall of most of those matters away from the Ecclesiasticall Courts. So that those Statutes which then were intended for the good of the Ecclesiasticall Courts are now become the utter ruine and overthrow of the same, contrarie to the rule of the Law, and common reason, that things which were purposed for one end, should worke vnto another end.

*L. legata inuol-  
liter. ff. de adi-  
mendis legatis. l.  
2. ante fin. C. de  
iureiur. propter  
calumniam dando.*

The first aduantage they take against the Ecclesiasticall Courts out of these Statutes, is gathered out of the twentie seuen and thirtie two of Henry the eight, where it is ordered that all the Kings subjects shall pay their Tythes according to the laudable uses and customes of their parishes, and places where such Tythes grow and become due: which, albeit is undoubtedly meant of Ecclesiasticall customes, triable at the Ecclesiasticall Law, and so ever held till now of late, that men thinke all too much that goeth beside their owne net: yet, there want not in these daies, which goe about with all might and maine to drawe away these things vnto the Temporal Courts, as belonging to the Temporal Crowne and dignitie: Wherein they do wrong, not only to the Kings Ecclesiasticall Courts, to spoile them of their ancient Jurisdiction, but also do intyre to the King himselfe, as though he had but one proper Jurisdiction belonging to his Throne, and seat of State, & that which were done by his Ecclesiasticall power, were done against his Crowne and Dignitie: whereas they are equally vntierred in him, and his Throne is no lesse staied up by his Ecclesiasticall power, than it is upholden by his Temporal authoritie. And therefore a meete Paradox is that, that they so constantly affirme, that customes in payment of Tythes are matters of Temporal cognisance only, and not of spirituall cognition. For as there be Seculer customes, such as are the customes of Bannors and Lordships, where the Lord hath his Kent, his heriot, his reliefe and service, and the tenant againe doth his homage and fealtie, according to the Nature of his Tenure, which

*ff. de iur. i. l.  
in casu dicitur  
ut si non habet  
ff. de iur. i. l.  
in casu dicitur*

*ff. de iur. i. l.  
in casu dicitur  
ut si non habet  
ff. de iur. i. l.  
in casu dicitur*

*Provincial. c.  
quoniam dedeci-  
mis.*

*L. Finali. ff. de  
officio eius cui  
mandata est iu-  
risd. c. l. 3. ff.  
de pena legata.*

*Bartol. l. nulli c.  
de iudiciis. Glos.  
c. significauerunt  
de iudiciis.*

seculer customes the so named statute *De Regia Prohibitione* forbiddeth Ecclesiasticall Judges to deale in: So also there are Ecclesiasticall customes, such as is the payment of Tithes and other Ecclesiasticall duties, to which common Lawyers are not to put their hands, but to abstaine from them, as dedicated to the vse and tryall of the spirituall Courts. Otherwise would neither the auncient authours of the Legantines and Prouinciall constitutions of this Land (the eldest of which, are equall with the daies of Henry the third, and the youngest of them endeth in the raigne of Henry the fifth) euer haue changed so many seuerall customes of payment of Tithes, as then were within the Land, and in stead of them haue brought in one vniforme payment of the same, as is at this day vsed, saue where either the negligence of the Parsons, or the couetousnesse of the Parishioners hath in some point changed the same. Neither would these statutes of Henry the eight euer haue ordered the people, should pay their Tithes after the laudable customes and vsages of the Parishes where they grew, if the vsage and custome of the payment it selfe had not bene subiect to the Ecclesiasticall cognisance: for inaine shall a man sue for that, the Law allowes him no course to come by, but be denyed in the speciall point belonging to that suite: for this is vnderstanded here where there is an authoritie of jurisdiction granted, there are in like manner granted all those things, without which, that authoritie or Jurisdiction cannot be perfected or performed. And therefore it is without question, as Tithes, by the said statute are made reseruable by the Ecclesiasticall Law, and not the Common Law: so also the Custome whereby they are paid, is onely reseruable at the Ecclesiasticall Law. Otherwise this inconuenience will follow hereupon, which in all other lawes, beside this of ours, is a great absurditie, that the common right of the same which the Christians call *conscientia* shall be dissembled and diuorced, which by all good policies together with all her parts emergent or annexed ought to be handled, discussed, and determined be-  
fore



foze one and the selfe same Iudge; one, I mean not in number, but one in profession, soz otherwise I should by this assertion, bar Appeales, which is not mine intent.

Which course, if it were held here in England, causes should not be drawne peecemaele in such sort as Medea toze her brother limme-meale, and one part of it carried to this Court, another to that, like vnto the rent limmes of the child that were cast here and there by Medea, thereby to hinder her father from pursuing of her; but al should be ended in one and the selfe same Court, which would be a great ease to the subject, who to his intollerable vexation, and excessive charges is compelled to run from Court to Court, and to gather vp as it were, one lim of his cause here, and another there, and yet happily in the end cannot make a whole and perfect body of it.

Beside, it is a mightie disorder in a common wealth, thus to iumble one Iurisdiction with another, & the very confusion as well of the one law as the other; soz as kingdomes are preserved by knowing their bounds, and keeping their limits, so also Iurisdicions are maintained and upheld by containing themselves within the lists or banks of their authoritie.

Further, vnlesse they will graunt there is an Ecclesiasticall custome, as there is a Seculer Custome, and that the one is as well to be tryed in the one Court, as the other is in the other, they will make their owne Doctrine in the besoze rehearsed Prohibition void, where they certaine vs there is a Seculer Custome; and if there be a Seculer custome, then doubtlesse there is also an Ecclesiasticall or spirituall custome: soz the word Seculer, is not put in that place absolutely, but relatively, and the nature of Relatiues, is one to put another, & one to remoue another: but by the Seculer custome they bar the Ciuillan, therfoze they grant him the spirituall, soz of contrarie things there are contrarie reasons and contrarie effects: and what that which is proposed, doth worke in that which is propounded, the same againe that which is opposed doth worke in that which is opposed, by

*cicero pro M. Tullio*

*Glos in clem. 7. a. in verbo a. zerna iter de summa trinit. & de catholica.*

*L. Fin. S. p. l. m. tem de legatis 3. & ibi Angel.*

which Rule, as Tempozall Lawyers are to deale in Tempozall Customes, and spirituall men are not to intermedle therin, so also Ecclesiasticall Lawyers are to deale in Ecclesiasticall causes, and that tempozal Lawyers are not to busie themselves thereabout.

And that this was the intent of the king, when he first received the Church into his protection, with all the priuiledges therof, may appeare hereby, that hauing vniited both the Jurisdictions in his owne person, hee did not iumble them both together, as now they are, but kept them distinct, one from the other; not only in authorising the Ecclesiasticall Courts that were before, but also in vsing the verie words and phrases that the Jurisdictionaries Ecclesiasticall did vse euery where in their writings, euen these words whereupon men now take hold to frame Prohibitions vpon, viz. (according to the laudable customs & vsages of the parish and places where such Tythes growe) which were the words of Innocent the third, in the Decretals vpon the title of Tythe long before these statutes were made, or any other statutes concerning the true payment of tythes; and Lincolne in the same title of tithes often vseth the very selfe same words and phrases that the other doth: so that if these words made no Prohibition before the statute (as I think, it cannot well be shewed to the contrary) neither ought they to do it now since the statute, so that they are taken still in the Church businesse, and not in a tempozall matter: whose gouernment, although it be vnder one and the selfe same Prince that the Tempozall State is, yet is it distinct from the same, as euery it hath bin since there hath bin any settled forme of Church gouernment in any common wealth, as may appeare both by the example of S. Paul; which neuer goeth to any tempozal power to punish the incestuous person, although there were sundry lawes then both in Greeke and Latine written of these matters, but doth it by the spirituall sword alone; and also by that, that in matters of far for worldly causes between brother and brother, he forbids such as were new Christians, to go to law before Infidels, but aduiseeth them rather to appoint Judges among them.

2. corinth. 5.

4. corinth. 6.



themselves to decide such controuersies: which, albeit in those daies was ment as wel of lay Christians, as of the ministers of the Gospell, for that the number of them then was small, and the causes of suit they had one against another were not many, and might easily be ended by one and the selfe same consistorie; yet when the number of the Christians increased, and the Church got some rest from persecution, the Jurisdiction was againe diuided, and as there were Seculer Courts appointed by Princes, wherein Temporal mens causes and Lay busineses were heard, so there were also by the same authoritie erected Ecclesiasticall Courts and Bishops *C. de episcopali* audiences, wherein either Ecclesiasticall mens causes alone, *audientia tortis;* or such as they had against Lay men, or Lay men against them were treated of, and determined.

So that this was no new deuise of Henry the eight, or Edward his sonne, that when they tooke vpon them the Supremacie ouer the Church, as they had befoze ouer the common wealth, they did not mishmash both the states together, and made one confused heape of them both, but left them seuered as they found them, only affording either of them an equall proportion of protection; for that by these two parts, the kings Monarchie is compleat, and himselfe is the head and chiefe Governour of the whole and entire bodie of his Realme. For this was exemplaried vnto them in all former ages since the Church and common wealth had any louing and kind cohabitation together, as hath bene befoze remembered. And therefore doe they wrong to the ashes of those kings deceased, which by subtile sence and strained interpretations, draw these Lawes which they intended for the benefit of the Church, and Church gouernment, to the ouerthrow of the same, as though the Positiue Lawes of the kingdome could not stand, if the Lawes of the Church continued and stood by right.

Vpon the same words of the same Statute, (if perhaps at any time there grow any controuersie about the limits or bounds of Parishes) they draw the same by like impossunitie from the triall of the Ecclesiasticall Law vnto  
the

*Registꝛo Eccle.  
Xpi. Cant. Stow.*

*Tit. cap. I. v. 5.*

the Common Law, auouching the same also to bee of the Tempozall cognisance, and yet Linwod, who liued in the daies of Henry the fift, making a Catalogue of the princippall matters, that in his daies belonged vnto the Ecclesiasticall Courts, reckoneth the bounds of Parishes for one. And very like it is it should so be, for that Ecclesiasticall men first in this Kingdome, made diuisions of Parishes, as by our owne Cronicles it appeareth; and the first practise thereof within this Realme, came from Honorius the fourth Archbishop of Canterbury after Augustine, who himselfe died in the yere of our Lord God 693. although otherwise the thing it selfe be moze auncient, and discends from the counsell of Saint Paul, he gaue to Titus, to appoint Elders in euerie Citie: but that Cities and Countreies againe are diuided into seuerall Parishes, it was the ordinance of Pope Dionisius, about the yere 266. & fro him deriued into this & other realms; & the distinction thereof was chiefly deuised that it might be knowne of what congregation euery people were, and that so they might be trained vp in the Schole of godlinesse vnder their owne Pastoz or Minister. But that now the diuision of Parishes doth serue to other politike vses, it comes not of the first institution thereof, which was mere Ecclesiasticall: but it groweth out of a second cause, that is because beeing so fitly and aptly primarily diuided by Ecclesiasticall men as they are; the Princes therfore did vse the opportunitie thereof for Tempozall seruices, subdiuiding the same againe into many Wythings or like smaller diuisions, for the moze speedie seruice of the king, and better ordering of the common wealth. Which our auncient Fathers well knowing, neuer called the same in question, acknowledging therein the good they had receiued from Ecclesiasticall men, by this partition of Countreies into Parishes: but men of later age being lesse thankfull than they, and loath to seeme beholding to Ecclesiasticall Courts for any matter of good order and disposition, haue arrogated the same wholly to the Tempozall Courts; as though the Ecclesiastical Iudge could not as well discern what two or thre honest men depose and say



say, as concerning the limits or bounds of a Parish, as twelve meane men of the countie, who are vpon like depositions to giue vp their verdict. But for the limits of Bishopricks, I acknowledge that they are Temporall, for that they were not primarily designed out by Ecclesiasticall men, and theire direction, but were assigned to Provinces, or Shires, first described and distinguished by Princes: but for Parishes, neyther reason nor antiquitie concurs with them, that they should be temporall, or that they should be vsurped or challenged to be of the temporall cognisance.

And so much for those Prohibitions, which they commonly frame out of the 27. and 32. of Henry the eight, not that there are no more but these, but that hauing a taste of these, there may be like Iudgement made of the rest.

Out of the Statute of the 2. of Edward the 6. cap. 13. they vpstart many Prohibitions, the first whereof in order of the Statute, although the last in practise is the prohibition of treble damages, vpon not diuiding and setting out of Tythes, or at the least, for the not compounding for them before they be carried away: Which forfeiture they suggest, and thereupon bring a Prohibition, and so draw the whole suit of Tythes into their Courts, contrary to the true meaning of this Statute, which would those treble dammages, in case of not iustly diuiding and setting out, or not compounding for the Tythes before they be carried away, be no lesse recoverable before an Ecclesiasticall Iudge according to the Kings Ecclesiasticall Law, than the forfeiture of double value, by the letting and stopping of them to be carried away, whereby they are lost, with the costs thereon growing, is remediable at the same Law: For albeit the clause which is to redresse this wrong, be put after that part of the Statute, which concernes the stopping and letting of Tythes to be carried away, yet when there is as great reason it should stretch it selfe to the first branch of the prouision, as to the second, and the second branch hangeth on the first by

*C. 5. s. 28. l. 1.*

*2. Inst. ff. ad l.  
Aquilam.*

a coniunction copulative, and there is no heterogeneity or disparity in the matter, whereby it may not be as well verified in the one branch, as in the other, I see no reason why it should not equally respect them both, according to the rule of the Law; *Clausula in fine posita reuertitur ad omnia precedentia*, maxime quando non resultaret intellectus contrarius iuri, as here it doth not: for the intendment of either branch of the Statute is, to procure by their severall forfeitures, a iust and true payment of Tythes, the recouerie whereof, as the precise words of the Statute in one member restrayne vnto the Ecclesiasticall Law; so the Identitie of reason in the other member doth confirme it vnto the same Law, for where there is the like reason or equitie, there ought to be the like disposition or order of Law.

Beside if the principall cause it selfe be triable in the Ecclesiasticall Court, why should not those things which hang thereon be tried in the same Court, for they are but as it were accessaries to the principall, and so not only follow the nature of the principall, but also belong to the Court of the principall, and are determinable where the principall is, for otherwise happily there might fall out contrary sentences of one and the selfe same thing, the one condemning, the other absolving.

Further in that Court wherein the course of Justice already is begun, the cause may with lesse labour and easer expences be ended, being both for the most part determinable by one sentence, than that a new proccesse thereof should begin before an other Judge, who knoweth little or nothing of the principall matter, and therefore cannot so easilie decide the accessarie.

Lastly, those which take this course, first to surmise a forfeiture, then to draw the originall suit, whereupon the forfeiture grew into question, bring in a proceeding far different from the common style of all well ordered Courts, in all Nations, among whom the cognisance of the cause, & triall thereof goeth before, and the forfeiture or execution thereof

fol.



folloiweth after: But in this Hysteron proteron, the execution is in the forward, and the triall is in the reeward: In which doing they deal much like as Cacus the Giant dealed with Hercules oren, who to thintent that Hercules should not find what way they were gon, drew them backward by the tayle into his Caue; but as that deuise serued not Cacus, but that Hercules had his oren againe, so it is to be hoped the Reuerend Judges of the land, will not long suffer this subtiltie to preuaile, but as it came in like a Foxe, and raigned as a Wolfe, so in the end it shall dye and vanish away like a vaine deuise, much like the destinie of Boniface the eight: for the reuerend Judges are not only to minister Justice betwene man & man, so that every man may haue his owne, and none be eppressed of an other, but also they are to carrie an vpriight and indifferent hand betwene Jurisdiction and Jurisdiction, yea, though themselues be parties to the matter in question, so that one Jurisdiction eat not vp an other, as the Locusts in Egypt deuoured by all the greene things of the land.

An other Renderous they make of the words of this Prouiso (Law, statute, priuiledge, prescription, or composition reall) as though all which passeth vnder any of these tearmes belongeth to the triall of the Common Law, and not to the cognisance of the Ecclesiasticall Law, and that forsooth, because these words and tearmes are expressed in the Statute: which is much like vnto that, as one would needes haue a house, to be Master Peacocks house, because he saw a Peacock sit vpon the top thereof: But it is not the naming of a thing in a Law or Statute, that makes it to be of the Temporall cognisance, or otherwise: but it is the nature or qualitie of the thing named, that rangeth it vnder the one Law, or the other. So that if the matter ordered in the Law or Statute be temporall, the cognisance shall be Temporall, if Spirituall, then the case is determinable in the Ecclesiasticall Law: for this Prouiso is not prohibitozie, as the last Prouiso of this statute is, whereby Ecclesiasticall Judges are forbidden to hold plea of any thing that is in the said

*De prescrip.  
lib. 2. tit. 26.  
De Privileg.  
lib. 5. tit. 33.*

Proviso conteyned ; but it is rather directive , and sheweth where the Ecclesiasticall Judge is to giue way to immunities , and to pronounce for them : so that for any thing is conteyned in this Proviso to the contrary, the cognisance of these matters , specially Priuiledge , Prescription , and Composition , shall remayneth at the triall of the Ecclesiasticall Law , as they did before this Proviso was made for Tythes , and other Ecclesiasticall duties , as may appeare by the seuerall Tytles in the same Law hereon written.

And for the other words , Law and Statute therein mentioned : when as the King hath two Capacities of gouernment in him, the one Spirituall, the other Temporall, and his high Court of Parliament , wherein Lawes are made, doth stand aswell of Spirituall men , as Temporall men , and so ought to stand in both houses , if the auncient booke, *De modo tenendi Parliamenti* be true and authenticall, which makes the vpper house of three states , the Kings Maiestie, the Lords Spirituall, and the Lords Temporall; and the Lower house in like sort of three other, the Knights, the Procurators for the Clergie , and the Burgesses ; and his Maiestie hath wythin this Realme aswell Ecclesiasticall Lawyers , as Temporall, which are no lesse able to iudge and determine of Ecclesiasticall matters , than the Temporall Lawyers of temporall businesse : It is not to be imagined , but as his sacred Maiestie will haue those Lawes to be held Temporall, and to haue their constructions from Temporall Lawyers , which are made and promulged vpon Temporall rights and causes : So also his Highnesse pleasure is , and euer hath bene of all his predecessors , Kinges and Quenes of thys Land , that such Lawes and Statutes as are set out and published vpon Ecclesiasticall thinges and matters , shall bee taken and accompted Ecclesiasticall , and interpreted by Ecclesiasticall Lawyers , although eyther of them haue interchangeably each others voyce in them to make them a Law .

And



And that the King doth infuse life into eyther of the Lawes, when as yet their substance is vnperfect, and they are as it were Embryos, is in Tempozall matters, by his tempozall authoritie, and in Spirituall matters, by his spirituall authoritie, for to that end he hath his double dignitie in that place, as also the Ecclesiasticall Prelates sustaine two persons in that place, the one as they are Barons, the other as they are Bishops: So that euen the orders of the house doe euince, that they are two sortes of Lawes in that place vnconfounded both in the head and the bodie, although for communion sake, and to adde moze strength to each of them, the generall allowance passeth ouer them all. And as they rest vnconfounded in the creation of them, so ought to be likewise in the execution of them: and as the Tempozall Law sortes to the Tempozall Lawyers, so the Spirituall Lawes or Statutes should be allowed and allotted vnto the Spirituall Lawyers.

And as the nomination of these words Law or Statute in this precedent Prouiso, makes not the Law or Statute Tempozall, but remayneth wholie Ecclesiasticall, by reason of the Spirituall matters it doth containe, and the power of him that quickneth it, and powzeth life therein: so much lesse can the inserting of these tearmes Priuiledges, Prescriptions, or Composition reall, intitule the Common Law to the right thereof, or the Professors of the said Law, to the interpretation thereof: for that matters of these tytles so far as they concerne Tythes, and other Ecclesiasticall dueties, haue been euer moze since there hath been any Ecclesiasticall Law in this land (which hath been nere as long as there hath been any profession of Christianitie with vs) of Ecclesiasticall ordinance, neyther euer were of the Tempozall cognisance, vntill new of late, that they transubstantiat euery thing into their owne profession; as Midas turned or transubstanciaded euery thing that he touched into gold.

But here it will not be amisse to inquire, (since Tythes

Malach. 3.

came in the beginning of the Primitive Church, wythin a little time after the destruction of Ierusalem, and the subuersion of the Jewes policie, vnto the Christian Church, and Common wealth, void of all these incumbrances, as shall appeare after by the testimonie of sundrie of the auncient Fathers, which were nere the Apostles time) how it comes to passe (since Tythes are no lesse the Lords portion now, than they were then, and in the Patriarkes time befoze them) that these grieuances haue come vpon them, more vnder the Gospell, than euer they did vnder the Law: for then neuer any Lay man durst stretch out his hand vnto them, to diminish any part thereof, but he was charged with robberie by the Lords owne mouth; and in punishment thereof, the Heauens were shut vp for giuing raine vnto the earth; and the Palmer worne and Grasshopper were sent to deuour all the greene things vpon the earth. And for Ecclesiasticall men, it is not read any where in the Scripture, that euer they attempted to graunt out anie priuiledge of Tythes to any person, other than to whom they were disposed by the Law, or to make anie composition thereof, betwene the Lay Jew, and the Lords Leuites: euery of the which haue bene, not only attempted agaynst the Church in Christianitie, but executed with great greedynesse: so far worse hath bene the state of the Ministerie vnder the Gospell, than was the condition of the Priestes and Leuites vnder the Law.

The beginning whereof, although it be hard for me to finde out, because there is small memory thereof left in Stories; yet as far as I can by all probabilities coniecture, this great alteration in Ecclesiasticall matters, came by two occasions: the one by the violence of the Laitie, thrusting themselves into these Ecclesiasticall rights, contrarie to the first institution thereof; for when they were first receyued into the Christian world, they were receyued and reddeed to, for the benefit of the Clergie only, as in former time vnder the Law, they had been for the vie of the Priestes  
and



and Levites only : The other was the too much curiositie of Scholmen , who being not content with the simple entertaynement of Wythes into the Church , as the auncient fathes of the Primitive Church receyued them , would needes seek out how , and in what right , and in what quantitie , this prouision belongs vnto the Church , wherein they did by their ouermuch subtiltie rather confound the trueth , than make that appeare they intended to doe . By the first of these was brought in that great prescription , which is called the Prescription beyond the Lateran Councell , whereby Lay men held Wythes in 'ee , wrythout paying any thing therfore vnto the Church ; and out of that issued the rest of those pettie Prescriptions , which we now haue , which are nothing elie but imitations of the first . By the second came in Priuiledges , Customes , and Compositions , or if they came not in wholly by them , yet surely were they much strengthened by them ; but of eyther of these after in their places . But for that of all these forenamed greauances in the Church , as far as my reading serues mee , Prescription is the eldest , and first rush into the Church , and violated the Liberties thereof ; I will first begyn thereby , and shew vpon what occasion it first seyled vpon the Church , and preuailed against her , and then will I speak of the rest in order .

It is out of question , that from the time of Origen , who lyued within fewer score yeares after the death of Saint Iohn the Euangelist , as also did Cyprian , who was his coequall in tyme , and so along by the ages of Chrysostome , Ambrose , and Augustine , and some of the puer Popes , as Urban the second , Dyonysius , and Gregorie the great , there was good vse of Wythe in the Churches , where Christian Religion was embraced , as may appeare by euery of their testimonies , that God had not appointed it to be a prouision onely for such as serued at the Altar vnder the Law , but also was purposed by him from the beginning , to be a maintenance for the Ministerie vnder the Gospell : and therefore Origen in his xi. Gemily vpon Psalme , speaking

speaking of Tythes, sayth thus, I hold it necessarie that this Law or pcept be obserued, according to the letter: and vpon the 22. of Mathew, he thinketh Christs words vttered there as concerning Tythe, to be a pcept no lesse necessarie for the vse of Christians, than they had bin for the Iewes: and therefore he accounteth Tythe neyther ceremoniall, nor Iudiciall, but morall and perpetuall. Cyprian in his lxxij. Epistle, aduiseeth the Clergie of his time, since they had Tythes allotted vnto them for their maintenance, they should not absent themselues from Gods seruice. Chrysostome vpon the viij. of the Actes, vseth this argument to perswade husbandmen to pay theyr Tythes truely vnto the Church, that it is good for them so to doe, for that there are continuall prayers and intercessions made for them by the Ministerie. Ierome vpon Tymothy sayeth, The pcept of payment of Tythes, is aswell to be vnderstood in the Christian people, as in the Iewes. Reade Ambrose, vpon his Lent Sermon, and Augustine vpon his rliij. Homily, and Gregory vpon his xvj. Homily, and you shall finde no lesse plaine places for the continuance of the payment of Tythes among the Christians, than the former were. Adde to these the practise of Dionisius himselfe, who by Ieromes account flourished in the yeare 266. who not only diuided out Parishes, drawing the erample thereof from Saint Paul, who first appointed Bishops in Cityes, but also assigned orderly to euerie Parish his Tythes. All which held in the Christian common wealth, in a decent and comely sort, vntill the irruption of the Hunnes, Goathes, and Vandals, vpon the Christian world, who first inuading Italy vnder the Emperour Iustinian, did for many yeares so harrow the whole Countrie, and specially Lumbardie, as that they left not almost a man of excellent Religion any where vnpersecuted, ouerturned Churches, burnt Libraries, ouerthrew Scholes of learning, and to be short, what wickednesse did they not: inso much as Gregorie the great, being otherwise a verie good man, and one that did relye himselfe vpon the prouidence of



of almightie God, verily thought and taught that the end of all things was then come: but after those fierce and barbarous people once set their face to goe against France, (which had bene hitherto free from that inundation) which happened in the daies of King Theodorick, who lived about the 650. yeare of the Incarnation of our Saviour Iesus Christ; Charles Martel the father of Pippin, after king of France, being then great master of the kings house, would not (although otherwise he were a very victorious man, and valiant Captaine) oppose himselfe against them, unless the vnder-clergie of France would be content to resigne every man his Wythes into his hands, that thereby he might reward the Souldiours, and support the charges of the war then present: which the poore Clergie, in respect of the eminent danger, and for that Charles Martell himselfe did solemnly vow and promise that they should bee forborne no longer, than for the time of the war, and that they should be restored vnto them againe at the end of the war, with a further gratuitie for their good wil, yielded most willingly thereunto, specially the Bishops not contradicting it, leauing to themselves a small portion of their living only, during the time of the daunger. Whereupon Charles Martell vndertaking the enterprize, got a mightie great victorie against the enemies, insomuch that hee slew in one battaile 34500. of the Infidels; which battaile being happily atchieued, and the danger of the wa. being past, the poore Clergie men hoping to receive againe their Wythes, according as it was promised them by Charles Martell, they were put from the possession thereof, and say or doe what they could, their benefices were diuided before their face, in recompence of their seruice, to such of the Nobilitie as had done valiantly in that action, and the same assured to them and theirs for euer in fee. And this is the first violence that euer Wythes suffered in the Christian world, after they left the Land of Iurie, and came to inhabite among the Christians; which albeit was a nefarious act, and nothing answerable to the late mercie that God had vouchsafed them in conquering of their

enemies,

*Hospinians  
or g. n. m. m. m.*

*Gagnius lib. 4  
Hystor. Franc.*

enemies, yet there wanted not like sacrilegious mindes in all Christian Lands, which did imitate this wicked fact of Martellus, insomuch as the example hereof passed ouer the Alps into Italy, and mounted aboue the Pyrenie Hills into Spaine, and within short time after sailed here into England: in such sort, as that euen to this day sundry Monuments thereof appeare euerywhere in the Land, where any tytle of immunitie is challenged from payment of Tythes, reaching beyond the Lateran Councell, whith can descend from no other head, than from this fact of Charles Martell; neither was there any redresse thereof untill the said Lateran Councell, before mentioned, which notwithstanding came nexte fife hundred yeares after: for this fact of Martellus was done about the six hundredeth and threescore yeare after the Natiuitie of our Sauour Iesus Christ, but the Councell that reformed it, and was holden vnder Alexander the third, was not celebrated before the yeare of the Incarnation 1189. neither was the reformation thereof at that time totall nor suitable to the first institution of Tythe among Christians.

For neither could many wilfull and refractarious persons, be then brought to obey the Canons of the Councell, in restoring any part thereof againe vnto the Church, although they were charged so to doe vnder paine of damnation. Neither did all such as did then restore them, restore them to the Churches from whence they were taken, which had bene most agreeable to the ordinance of the Church set downe by Dionysius, who first diuided Parishes and assigned vnto them Tythes, as hath bene aforesaid; and also to the Scripture it selfe from whence Dionysius took his light to diuide Parishes and dispose of Tythes as hee did, by which it was not lawfull for him that paid his Tythes to pay them to what Priest or Leuite him liked, but hee must pay them to the Priest or Leuite that dwelt in the place where himselfe made his aboad; but yet this libertie that was giuen them by the Councell then,

Deuteran, 18.



gave cause vnto the errour that the common Lawyers hold at this day (not knowing the aunient proceedings of the Church in these cases) that befoze the Lateran Council, it was lawfull for every man to giue his Tythes to what Church he would, which was so farre otherwise, as that befoze this violence offered vnto the Church, there was a flat Canon, moze aunient then the fact of Charles Martellus, which did precisely forbid any man to pay, or a Bishop to giue leaue to any man to pay his Tythes from the baptisimall Church to another: and that the contrary was yeelded to in the Lateran Council, was not that they held it lawfull to enrich one Church in this sort, with the impouerishment of another, but the cause was the hardnesse of mens hearts, who scarcely could bee won by this fauour to restore that little againe vnto the Church, that their forefathers had in such abundance taken away from it: and that the Fathers of the said Council did yeeld thereunto (although it were an inconuenience thus to doe) was for that they did count, although they did adinit that for the present, yet there might bee a better time found out after for the reformation thereof, and so sustained the inconuenience for the present vpon this reason; that the vniuersall Church of Christ is one bodie, and every particular Church a part of that bodie, and so it lesse mattered to what particular Church they were restored, so that they were restored at all: for that by the restitution to one they hoped in time they might with more likelyhoode come vnto the other; for in those things wherein there is an Identitie or like representation of Nature and condition, as is betwene Church and Church, is easier passage the one from the other than is in those that are of different nature and disposition, as is in a lay man and a Church.

Out of these raines of these violent and presumptuous prescriptions, which haue now obtained strength of a statute in the world haue issued out sundry petty prescriptions, which also are confirmed by law and custom as the other

Leo. 4.  
13. q. 1. c. Eccl.

*Regu. sine pos.  
fessionis d. regu.  
in iura in 5.*

*Linnod Prouin.  
quemam verbo  
uniformis in Glo.  
de decim.*

*Mod. verbo con-  
suetudines.*

*Ca. a nobis de de-  
cimis in Glo.*

were; as the prescription wherein one Church prescribeth Tythes against another Church, the Law punishing therein the negligence of the one and rewarding the vigilancie of the other: Prescriptions, wherein one Ecclesiasticall body corporate or politique, prescribeth Tythes or other Ecclesiasticall duties against the Parson or Vicar of the Parish, and the Parson and Vicar againe against them: A prescription whereby a Lay man hauing no right to prescribe Tythes (because he can in no right possesse Tythes, and prescription cannot proceed without possession) doth notwithstanding by pernancie or giuing iome part of his ground or pension in money in lieu thereof, prescribe a discharge therof: A prescription wherein a lay man doth prescribe the manner of Tything, which albeit by the comon Law is counted to be good by paying a thing neuer so small in lieu thereof, yet neither by the Canon Law, neither by the Law of God it selfe, it could euer be lesse than the iust tenth it selfe; so that the manner of Tything with them is not vnderstood in that sence, as the Common Lawyers doe take it, by paying any thing whatsoeuer in place of the iust tenth, but their intentment hereby, is that no country can be bound to an vniiformitie of payment of Tythes to be vsed euerywhere: but euery man is to pay Tythes according to the manner of the Country where he dwels, that is, that one paies his Tythe corne, and binds vp the same in sheaues, another leaues it scattered in the furrowes, another Tythes it in Cocks or Hokes; and this is that, that they meane, that there cannot be an vniiformitie of Tything prescribed to euery man after which he is of necessitie to set out his Tythe, but that he may prescribe some other manner of Tything against the Parson or Vicar: but against that vniiformitie that the whole tythe should not be paid, was neuer any prescription allowed among them, for they euermore haue bene of this minde contrary to that that the Scholemen hold, that Tythes are part of the Morall Law, and not of the Iudiciall or Ceremoniall Law; and that in the Precept of Tythes, there is a double consideration, one of the honour of God, whereby he retained



ned tythes vnto himselfe, in signe of his vniuersall Lordship ouer the whole world, which is irremissable, the other of the profit or vtilitie of man in that it concerns the prouision of the Minister in all ages, which is vndispensable.

And yet, notwithstanding all this, the Ecclesiasticall Judge admitteth all kinds of prescription befozenamed, and according to the proofes thercon brought, giueth sentence either to absolution or condemnation: albeit the reuerent Judges of the Land, vpon an erroneous report made in the eight yeare of Edward the fourth, haue a conceipt to the contrary, viz. That no Ecclesiasticall Judge will admit any Plea in discharge of Tythe, or the manner of Tything, as it is in their sence taken; and therfore they hold whatsoever the Defendant doth alledge in his suit for a consultation, and namely that the Ecclesiasticall Judge did allow of the Plaintifes Plea and allegation, and did admit him to the proofes thereon without deniall, are idle speeches, and rather words of courie than of effect and substance. And therfore notwithstanding, whatsoever is alledged by the Defendant as concerning the Ecclesiasticall Judges well acceptance thereof, it is counted nothing materiall by the Tempozall Judges, for that they haue a preiudicate opinion of the Ecclesiasticall Judge in these cases, and therfore howsoever the refusal be, or be not, they grant out their Prohibition in these cases. And yet if the Judges Ecclesiasticall proceedings might be seene and vouchsafed to be read before them, it would bee plaine, there were no such cause of their hard opinion against them; for euerywhere they doe allow such like allegations. And if perhaps one inferiour Judge should make refusal as they pretend, yet could it not be reformed, by another in an ordinarie course of appeale, but that there must needs be brought a Prohibition out of the Common law to redresse the same: vnlesse happily they can shew, it is a generall conspiracie in the Ecclesiasticall Judges, or a Maxime in their learning, that they will not or cannot admit any Plea of discharge in this case, which they can neuer doe. And therfore they are to be intreated to change their

¶ 3

opinion

opinion in this point, and doe not the Ecclesiasticall Judges that wrong, as to charge them with such an imputation, whereof their whole practise is witnesse to the contrarie: for it is unworthy such mens grautie as theirs is, who propound vnto themselves the inquirie of the truth in all matters, thus to be misconceiued and masked in an error, and that for so many yeares, and not to bee willing to heare the contrarie, which is an obstinacie in policie no lesse indurat, than the Papists is in Religion, who see the truth and will not beleue it. And so far as concerning Prescriptions and the first cause and beginning thereof.

Now it followeth I speake of Priuiledges which are immunities graunted vnto priuat men beside the Law.

Of these, some are very auncient, such as true zeale toward the Church bred, and the iust admiration of the holy men of God for their sanctimonie of life, their great knowledge in the word of God, their great patience in persecution for Christ and his Gospell, the vigilancie and care they had in their Office, stirred vp both in Prince and people. So Constantine the great, being rauished with the loue of Religion, and the good opinion he had of the Ministers of his time, erected Churches, and endowed them with large possessions, and graunted them sundry immunities, whereby they might more securely intend to the preaching of the word of God, and the winning of soules to the Christian congregation, wherein they laboured with all their might and power, God still adding to the number of the Elect. Neither did he this alone in his owne person, but he also gaue leaue to all other of his subiects that would doe the like: whereupon the Church was so enriched within a short time, that as Moses in the building of the Arke, was faine to make proclamation, no man should bring in more towards the building thereof, the people bringing in continually such great abundance of all things necessarie towards the furnishing thereof, as that there was enough and much to spare: So also Theodosius the thirtieth Emperour after Constantine, (although

*L. x. c. de sacros.  
Ecclesin S. f.  
quin authens. de  
Ecclesin*



(although otherwise a most loving and favourable Prince towards the Church) was faine to make a Law of Amortisation or Mortmaine, to moderate the peoples bounty towards the Church; as did also many wise Princes in other Nations upon like occasion, and in imitation of this Act of Theodosius, many yeares after; and among the rest, diuerse Princes of this Land did the like, upon the instage of the people towards the Religious Houses, & specially towards the foure Orders of friers that were then newly sprung vp in the world. But yet this Act of Theodosius was done with the great dislike of these blessed men Ierom and Ambrose, who liued in those daies, so; that Ierom thus complaineth of that Law to Nepotian: I am ashamed to saie it, the Priests of Idols, Stage-players, Coach-men, and Common Harlots, are made capable of Inheritance, and receiue Legacies, onely Ministers of the Gospell, and Monkes are barred by Lawe thus to doe; and that not by persecutors, but by Christian Princes, neither doe I complayne of the Lawe, but I am sorie wee haue deserued to haue such a Law made against vs: In like manner, and upon the same occasion doth Ambrose deploze the state of the Clergie in his one and thirtieth Epistle: Wee count it (saith hee) no iniurie, in that it is a losse, wee are not grieved that all sorts of men are made capable of Wills, none excepted; how base, prophane, or lauish of his life or honestie soeuer hee bee, but I am sorie that the Clergie men only of all sorts of people, are bard the benefit of the Law that that is common to all; who notwithstanding, onely pray for all, and doe the common celebration of the Service for all. So far they.

And yet whosoever lookes into this constitution, where by it was forbidden that any man should passe any Lands or other immoueable possession vnto the Church, without the Princes leaue (so; that thereby the things that are so passed, come as it were, into a dead hand, which holdeth surely fast that it once apprehendeth, neither easily parteth with it, so that it cannot  
with

*Magna charta*  
*cap. 16. W. 1. c. 4.*  
*31. an. 13. Ed. 1.*

without much difficultie bee reduced and brought againe to the commerce and common vse of men) shall find it was rather for the benefit of the common wealth, than for the dislike of the Church, it was so ordered.

For if that course had bene holden on still, the greatest part of the liuelihood of the common wealth, woule in short tyme haue come vnto the Church, and so Lay men should not haue bene able to haue borne the publicke burthens of the common wealth; which it concerns Secular Princes to be carefull of, and to foresee that by ouermuch bountie towards the Church they impouerish not their owne state, and lose the rights of Cicheats, Primer seison, and other Priuiledges of the Crowne in cases of forfaiture, and specially make bare their Lay subiects, vpon whom a great seruite of the common wealth doth lye. And yet otherwise the beneficiallest state of this Realme vnto the Prince is the Clergie, as from whom the King hath a continuall renew in Tenths, and is deepest in Subsidie, and not the least in all other extraordinary charges according to the proportion of their place. And therefore, as the King is to maintaine the one, so he is also to cherish the other, and not to suffer their state in any sort to be diminished, for that all other states are made for the seruite of the Church, and the Church again for the benefit of them.

But this was none of those Priuiledges I spake of, for these are more auncient than they, and graunted out vpon better deuotion than the other: but after this, the zeale of Religion being almost extinguished in the Christian world, partly by the great uproars and tumults that were in euery Country, by the influence of one barbarous Nation or other into them, who pulled downe Churches faster than euer they were built, and made hauock both of Priest and people, that professed the name of Christ, partly by the heresies that rose euerywhere in the Church in those daies, which distracted mens minds, and made them wauer in the constancie of their Religion, it was reuiued againe vpon this occasion,

One



One Benedict, who otherwise had been a man of action in the Common wealth, (that Benedict which was as it were the Father of all those that professed a Regular life, within the West part of Christendome; so before his time the Monkes of the West Church, serued God freely as broad, without being shut vp in a Cloister) he I say finding himselfe, wearied with the tumults and boyles which happened vnder the gouernment of Iustinian, and some yeares after by the incursion of those barbarous Nations before named into Italy, retired himselfe into a desert and solitary place, intending there to giue himselfe wholly to the seruice of God: where when he had a while remayned, he grew so famous by his Christian exercises of fasting and prayer, and the good and hollesome exhortations that he made to those that resorted vnto him, that within a very little time after, there was great confluence of people vnto him, not only from diuers parts of Italy, but euen from sundry other parts of the world, so that within a short time they grew into fraternities vnderneath him, to whom he gaue rules to liue by, to the imitation of that, that Saint Basil did in the East Church: to which his disciples submitted themselves with all alacritie, leading a life far different from the common sort of men, denying vnto themselves all those ordinary delights that other men doe commonly take, out of meat, drink, apparell, marriage, Tempozall preferment, & such other things which worldly and carnall men seeke for verie greedily, humbling themselves only to God, and the rule of their Pastor. Which thing bred such an admiration of him, and of his Schollers, that not only many other orders sprang out from them within few yeres; as the Premonstratenses, Clunacenses, Templarians, Hospitallers, Cystertians, and the order of Saint Iohns of Ierusalem, but euen Popes, Princes, and people were wholly carried away with the wonderment of them, insomuch as euery of them did as it were strue, who might shew themselves most kind vnto them; whereupon Princes built them houses, euery one in his kingdome, as Chito Ethelbald king of Mercia, buylt the Monasterie of

Crowland here in England, of black Monks, vnder the rule of the said Benedict, in the yeare 716. Popes and Princes graunted them priuiledges, so far as it concerned eyther of their particulers: the Clergie, Nobilitie, and People, conferred goods and lands vpon them, euery one according to his abilitie.

In this zealous bountie of euery degree towards these new sort of men, there were two vndigested Priuiledges graunted them, both of them so hurtfull and iniurious to the Church of God, as neuer any was the like. The one was the anneration or appropriation of presentatiue Benefices to these Religious houses: The other, the freeing of such lands or hereditaments, as they held in sundry Parishes from the payment of Tythes to the Parsons and Vicars thereof; to both of which the Scholmens diuinitie gaue great aduantage, as shall be shewed hereafter.

Eyther of these had their beginning of one roote, that is to say, of this false ground, that Preaching which is the most true, and most naturall foode of the Soule, in a congregation that is come to the profession of Religion already, & knowes but onely the Articles of the Christian Faith, the Lords Prayer, the ten Commaundements, and other principles and Rudiments of Christian Religion, is nothing so necessarie for the saluation of a mans Soule, as Prayer is: beside, that preaching oftentimes giues more cause of Schisme and dispute in Religion, than it doth of profitting & edifying the Soule: and therefore it was not permitted by the Præuinciall constitutions of this Realme, that Parsons or Vicars of Churches, should expound or preach any other matter or doctrine, than the Lords prayer, the ten Commaundements, the two precepts of the Gospell, that is, the loue of God, and the loue of a mans Neighbour, the five works of Mercie, the seven principall Vertues, the seven Sacraments, (so many then the Romish Church held) the seven deadly Sinnes, with their progenie, and this to be done vulgarly and plainly, Absque cuiuslibet subtilitatis textura fantastica, so they call learned and orderly Preaching; whereas

*Linwood puin.  
eisdem, de  
offic. Archidia.  
aconis, et ca.  
ignorantia Sa.  
cerdotum, de  
officio Archi.  
presbyteri.*



whereas notwithstanding Prayer is euermore profitable, euery where necessarie, and neuer dangerous: Furthermore, Preaching onely profiteth those, that be present and doe heare it, and attend vpon it: but Prayer is available, even to those that be far distant, yea, though they be in the remotest place of the world. By which, and other like arguments, they translated away that maintenance that was provided for the home Pastors, (who by Gods owne institution, were to watch ouer their Soules) to forrein and strange Guides, who neuer communicated to their necessitie in any heauenly comfort, but only toke the milke of the flock, and fed themselves withall. But by this presence of theirs, ought not Preaching to haue been disgraced, for albeit Prayer be a necessary parte of Gods seruice, and so necessary, that the Soule of man is as it were dead without it; yet is it not equall to the dignitie of Preaching, which God hath ordeyned to be the onely meanes to come to Salvation by: for Faith comes by hearing, and hearing by the word of God, and without Faith it is impossible to be saued: for Faith is a gift that purifies the hart, and makes a mans prayers acceptable to God; and therefore neyther of them ought so to take place, as that the one should shoulde out the other, but they ought so to go hand in hand together, as that ene should help, assist, and countenance thother.

But how these annexations of Benefices first came into the Church, whether by the Princes authoritie, or the Popes licence, it is verie disputable, and there are reasons on both sides for to shew the same.

For whereas there are reported by Ingulphus Abbot of Crowland before mentioned, to haue bin viij. Churches, beside the Patronage of some other, annexed and appropriated to the said Abbey, by sundry Saxon Kings, it doth not appere by ought that I can find; whether they were done by the soueraigne authority of the kings alone, to the imitation of that, that was done by Martellus, who made all Christian Kings to sinne in this point, or that it was done by any o-

ther Ecclesiastical authoritie, so that there is nothing extant  
 for the allowance thereof, save the severall Charters of those  
 auncient Kings only: and that I should be rather induced  
 to beleue that it was done by those Kings authoritie only;  
 I am thereto perswaded, that I find William the Conque-  
 ror, immediatly vpon the great victorie that he got ouer this  
 kingdome, to haue appropriated thre Parish Churches to  
 the Abbey of Battaille, which he buylt in memorie of his  
 Conquest. And whereas William his sonne had depopulated  
 & ouerthrowen sundry Churches in the new Forrest, Hen-  
 ric his brother by his Letters Patents gaue the Tithes ther-  
 of to the Cathedrall Church of Sarum, and annered there-  
 to xx. other Churches in one day, if the copie of that Re-  
 cord that I haue seene, as concerning these appropriati-  
 ons, be true: yea the matter was gon so far in those dayes,  
 that euen Noble persons, and other meaner men, would  
 commaund Corrodies and Pensions to their Chapleines,  
 and other seruants, out of Churches, and could not be re-  
 dressed, vntill such time as there was made a Statute to  
 refoyme it.

*Adm. 1. Edw. 3.  
 cap. 10.*

On the contrarie side, that I should take it to be a deuise  
 of the Pope, I am moued thereto, that I find euery of these  
 orders of Religious men were confirmed by one Pope or  
 other; and as they confirmed them, so it is like they made  
 prouision for them, and that most especially this way; and  
 that chiefly after the Lawes of amortisation were deuised  
 and put in bre by Princes: and thereupon it is that we finde  
 sundry sorts of anneration made by Popes & Bishops vnder  
 them, euery one in their Diocesse: as some were made so  
 far as concerned the Patronage only, & then had the Monks  
 therein presentation only: some other were made pleno iure,  
 and then might the Monkes both institute & destitute therein  
 without the Bishop, and turne all the profit thereon to their  
 owne vse, reseruing onely a porcion to him that should serue  
 the Cure there: some other Churches did they graunt simply  
 to them, without any addition of full right, or otherwise,  
 and then if the Church were of their owne foundation, they  
 might

*Linwood. c. licet  
 bona memoria.  
 gloss. in verb.  
 asserunt non  
 ligari. de lo-  
 cato & con-  
 ducto.*



might chuse, the Incumbent being once dead, whether they would put any other therein; vnlesse perhaps the same Church had people belonging vnto it, for then must they of necessity still maintaine a Curat there; and of this sort were their Granges & Priories, & those which at this day we call Donatiues: but if it were of an other mans foundation, then was it otherwise. To this also I adde that, that the Pope euery where in his Decretals, arrogateth this right vnto himselfe, as a Prerogative of the Apostolike See, to graunt these priuiledges to Religious orders, to take and receiue Benefices at lay mens hands, by the mediation of the Diocesan whose office it was to be a meane betwene the Religious house and the Incumbent, for an indifferent rate that neither of them should presse too much the one vpon the other: and therefore in the beginning, the vsuall rate that they set downe betwene the beneficed man, and the Religious person was the one halfe of the Benefice, for that it was not thought that the Pope would charge a Church aboue that rate. But after by the couetousnesse of Monkes and Friers themselues, and the remisnesse of the Bishops, who had the managing of this businesse vnder the Apostolike See, the Incumbents part came to so small a portion, that Urban the fifth, by Othobon his Legate here in England, in the yeare of Saluation 1262. was faine to make a Legantine, whereby he forbade all Bishops of this Land to appropriat any more Churches, to any Monasterie, or other Religious houses, but in cases onely, where the persons or places to whom they were appropriated, were so poore, as that otherwise they were not able to susteine themselues; or that the cause were so iust, that it might be taken rather to be a worke of charitie, than any inforcement against Law: and that beside with this Prouiso; as that if the new Proprietaries within fire Monethes next after, should not set out a competent portion for the Minister, of the fruites of the Benefice, themselues should assigne out a sufficient maintenance thereout, according to the quantitie and qualitie thereof; Which constitution, be-

*Gloss. in verb.  
de Decima*

*Othobon. c. quoniam de Appropriationibus Ecclesiarum.*

An. 15. Rich. 2.  
cap. 6.

An. 4. H. 4.  
cap. 12.

cause it toke not that effect that was hoped, there were two Statutes made, the one by Richard the second, the other by his successor Henry the fourth, both for the conuenable indowment of the Vicar, there to doe diuine Seruice, and informe the people, and to keepe hospitalitie among them.

Albeit most of these Appropriations were principally in Monkes and Fryers, and such other Religious persons, yet were not Bishops Sees, and Cathedrall Churches, altogether free from them, as I haue before shewed in the Cathedrall Church of Salisburie, to whom Henry the first appropriated nere twentie Churches in one day: And the See of Winchester, which hath had two Benefices aunciently annexed to the Bishops table, the Parsonage of Eastmeane, and the Parsonage of Hambleton. Neither do I doubt, but the like was done in other Bishops Sees, and other Cathedrall Churches, if I had as good instruction to report of them, as I haue had information to speake of these.

And so far as concerning the first effect of Priuiledges, whereby sundry fat Benefices haue bene iniuriously drawn from their owne Churches, and unnaturally appropriated to Monks and Fryeries, and other secular and Religious places; which as I haue said, hath bene partly the act of Lay men, and partly of Ecclesiasticall men. Now followeth the second effect hereof.

Ca. ex parte tua.  
gloss. in verb.  
laborum de desim.

Fod. in dca gloss.  
verb. laborum.

And that is, the exemption of these Religious mens possessions from payment of Tythes, which is a priuiledge of the Pope alone: for Monks aunciently paid Tythes of their land, before these priuiledges, as other Lay men did. But Pascale the second, casting a more fauorable aspect towards Monks, and other Religious men, than any of his predecessors before time had done, did order together with the Councell of Bents, That neyther Monks, nor other Religious persons, or any other that lyued in common, should pay Tythes of their owne labors: Which immunitie in procelle of time, Pope Adrian recald, so far as it con-



it concerned the rest of the Religious persons, and limited it onely to the Cystertians, Hospitallers, Templers, & those which were of the order of S. Johns in Ierusalem, leaving onely to the rest freedom from paying Tythes of landes newly broken by, and laboured wyth their owne hands, and of their garden, and of their cattell. In which state the matter stood untill Innocent the thirde dayes, who although he were in no other point of better mould than the rest of the Popes were; yet was he in this more pittifull towards poore Incumbents of Parish Churches, than any of his predecessors had bene; who seeing hereby the inconveniences of beggery and ignorance that grew upon sundry of the Parochian Priests, by meanes of these Priviledges, ordered in the second Lateran Councell, holden in the yeare of grace 1120. that for such lands as any of the said sower Priviledged orders, should acquire and get after the said generall Councell, they should pay Tythes, or compound for them as other men did; yea though they laboured them wyth their owne hands, or manured them at their owne charges. Which consideration also moved Henry the fourth, a king of this Realme, to provide by Statute, first, that such of the order of Cystertians, as had purchased Bulls to be discharged of Tythes, should be reduced into that state, as they were before: Then, that no person Religious or Secular, by colour of any Bulls, containing any priviledges, to be discharged of Dismes pertaining to any Parish Church, not put in execution, should put the same in execution, or should purchase the like in time to come.

*Ca. nuper Abbas  
tes, de decimis.*

*An. 2. H. 4. ca. 4.*

*An. 7. H. 4. ca. 6.*

Whereby it is verie probable, that few of those landes which are now challenged to be free of Tythe by the Statute of the xxxi. of Henry the eight are free of Tythes in deed; for that they are no otherwise freed by that Statute, than that they were first freed in the Religious mens hands; so that if they were never freed in their hands, they remaine still charged with Tythes.

*31. Hen. 8. cap.  
13.*

But betwene this interruption of not paying of Tythes wrought

brought by Innocent, in the second Lateran Councell, and the dissolution of Monasteries effected by Henry the big, are three hundred and thirty yeares, and betwene the foresaid Statute, made in the seventh yeare of Henry the fourth, and the subuersion of the Monasteries brought to passe by Henry the eight, as hath bin before remembred, are one hundred and thirty yeares. In which long distance of time the one from the other, it is not to be doubted but many of those Religious houses were built and indowed, which by no possible meanes could be partakers of those priuiledges which were abolished before the time of their erection: neither was there any reuyuing or renewing of these priuiledges by any Pope of Rome, or Prince in this Realme, after they were thus first repealed by the Pope and Prince aforesaid, so ought that I haue read, or heard to the contrarye.

So that if this matter were well vnderstood, and the ages and orders of those Religious persons from whom the clayme is made, were rightly conceiued, it would giue great light vnto the Judges to discerne what lands were exempted from the payment of Tithes, and what not: for now many are pretended to be exempted from Tythes, which neuer were of any of those former orders, and if they were, yet were they not before the time of the interruption, but since.

And so far as concerning the second effect of these Priuiledges. Now it followeth that I speake a word or two of compositions, which are agreements betwene persons litigant, whereby eyther partie may know their owne right, and not strue againe about doubtfull matters. As good Lawes haue growen out of ill manners, so compositions haue risen out of quarrels, caused by priuiledges, and other like exemption for matter of Tythe: whereof although there be no speciall Treatise in the Law, as there is of the rest, yet they are so often mentioned by the Decretals themselves, as that it is not to be doubted, but that they are part of the Ecclesiasticall Law, as well as the rest are, & that they



they are the deuise of the Ecclesiasticall Lawyers, and not the concept of the Common Lawyers, the forme and stile of them doth wel shew, which sauoureth wholly the maner and phrase of writing of the Ecclesiastical men, & hath no touch of the Common Law at all. And if the deuise bee the Ecclesiastical mens, as all Bishops Registers euerywhere do shew, which are full of these compositions, why should not also the titill be theirs, that euery cause might haue his ending, where it hath his beginning? *Eorum enim est legem interpretari, quorum est condere.*

And these are those grieuances of the Church, which I said the Scholemens curiositie in their distinctions; either inuented, or gaue strength vnto them after they were inuented; but inuent them all I thinke they did not, for that these Acts of appropriations of benefices were somewhat more ancient than the Scholemen themselves are: but the rest of the Priuiledges, they either came into the world with them, or insued anon after them, so that I may well say they much strengthened this iniquitie. For when that euery man vnderstood by their Doctrin the quotitie of Tythes, or the tenth part thereof was not precisely by Gods Law (since the light of the Gospell sprang out as the day light vnto the Christians, who before sate in darknesse, and the shadow of death) but that it was by the institution of the Church onely; then began they freely to spoyle the Church, of her due Tythes, and to giue away that to one Church, that was due to another. And the reason that persuadeth the Scholemen to this, was that after much adoe, diuiding the whole Law of Moses into thre parts, the Morall, the Iudiciall, and the Ceremoniall, they did conclude that there were thre parts likewise in the Tythe, the one Morall, which was a necessarie maintenance for the Minister, and therefore was naturall and perpetual: the other Iudiciall, which was the number of ten, fit as they taught for that people onely, and therefore was positieue and remotive: the last Ceremoniall, and that was the mysteric contained in this quotitie, or number of Ten, which being but a shadow onely, was abolished with  

P

the

the Law it selfe: wherby they did (infer the precise number of Ten being taken away, by reason of the Ceremonie it selfe) a competencie now onely doth remaine for the Minister out of the Tyths: which opinion hath bin wel confuted of late, by a very learned man, as his Treatise therof doth well shew; but I fear with lesse successe than the truth of y<sup>e</sup> cause doth deserve, for this is a point that toucheth many mens priuat benefit, & therefore shal haue no more fauor than it needs must.

*Thom. in quod-  
dam part. 3. art.  
6. q. 6.*

But the deuise whercon the Schoolmen did build this Ceremonie is this, that as all Digits vnder ten are vnperfect, & do tend to ten as to their perfectiue; so all men, saue Christ alone, are vnperfect & haue need of Christs righteousnesse to make them perfect: Which Abraham well knowing, paid Tythes to Melchisedech, who was the figure of Christ, as therein acknowledging that himselfe & al mankind, who were represented by the other nine Digits were vnperfect by reason of Original sin dwelling in them, & therefore had need to be perfected by Christ who was figured by the tenth number.

*Idem part 22.  
q. 87. art. 1.*

All which that we may grant to bee true betwene Christ and all mankind, as it is true indeed, and that ten is the perfection of the other numbers vnder ten, for that all the rest of the Digits, when they come to ten, returne backe againe to ten, and are multiplied by the coupling of themselves with ten: yet where is this proportion betwene Christ and ten in the Scripture, that should make this Ceremonie? which if it cannot be found any where, nor any consent of the primitive Church shewd for it, as I thinke it cannot bee, then may it with as good authoritie bee reiected as it is receiued. For albeit Thomas Aquinas himselfe weret called a Seraphical Doctor, that is, such a one as had a sence in the vnderstanding of the holy Scripture aboue all others of his age, and that he did much profit the study of Diuinitie, with his wittie distinctions: yet is not his authoritie such, that it must preuaile in cases of Diuinitie, without the authoritie of the Scripture & the consent of the ancient fathers of the primitive Church, interpreting this peece of Scripture in that sence as he doth, which wold make a sweet harmony if it might be had.

And



And therefore as to my p<sup>re</sup>sence, better said a learned *Iunius in. 2. ci. 3.*  
man of our time to this point, writing upon the Sabbath *Genes.*  
day in the second of Genesis, which may be also proportiona-  
bly vnderstood of the tenth, for that they were both before the  
Law in their very number, and were but repeated by Moses  
vnder the Law, because they had bin approued by God before  
the Law in the selfe same numbers: and that which he saith  
of the Sabbath is this, that albeit it hath a Ceremoniall de-  
signation of the day, that is, that it doth figure vnto vs our  
perpetual rest, which we shal haue in heauen, after that there  
is a new heauen & a new earth, yet there is therein two parts,  
the one naturall the other positue, as that God should haue  
a seuenth day of worship, this is Naturall, & therefore doth re-  
maine, because it is perpetuall: but that this seuenth day of  
the Lords worship shold be y<sup>e</sup> seuenth day after the Creation  
of the word, this was positue, & therefore was changed by the  
Apostles & blessedmen of the primitiue church into the seuenth  
day after the resurrection of our Saviour Jesus Christ: which  
as it is verified by him in the Sabbath, so may it be in like  
sort vouched by like reason in the tenth, wherein also by like  
semblance there are two parts, the one naturall the other po-  
situe. The naturall is this: that God out of all the fruits of  
the earth, the increase of cattell that are worthy of him and fit  
for mans vse, should haue a tenth, both in the acknowledge-  
ment of his vniuersall gouernment ouer vs, and also for the  
prouision of his ministers, & therefore this remaineth: and in  
that sence immediatly after the dissolution of the Jews policie,  
the good Christians of the Primitiue Church as soone as they  
could get any outward forme of a Church, & peace from perse-  
cution receiued it in the very quotitie, as a thing no lesse be-  
longing to their ministers, than it did appertain to y<sup>e</sup> priests  
and Leuites of the Law: But that the Lord annered these  
tyths by Moses to the Priests & Leuits for their maintnance  
during the time of the dispensing of the mysteries vnder the  
law, this is positue, & therefore changed by the good christians  
in the primitiue church from the Jews Ecclesiastiques to the  
Christian Ecclesiastiques.

Neither can it be thought this number came from the Iudiciall part of the Law, as a fit proportion to maintaine one Tribe, out of the reuenues of the other eleuen Tribes: for that this number of quotitie was reuealed to be Gods long before the Law, and before there was any such diuision of Tribes among the people of Israell; which yet were not, but were parted after ward by Moses into families according to the number of the Twelue sons of Iacob. And therefore it is not to be presumed that the Law which came long after, imprinted a forme vpon that, which was so long in being before there was any Law or ceremonie. But as the Apostles or prime Christians, whenas they did first change the day of the Sabbaoth by diuine inspiration or otherwise, from the day of the Creation, to the day of the Resurrection, durst not substitute any other day into the place of the first day than a seuenth; for that the Lord had reuealed his pleasure in many places of the Scripture as concerning that number, for his day of worship, so that no other day could be appointed for his day of worship than a seuenth: So neither durst the good Christians of the Primitive Church (moued no doubt with no other instinct than the other were, when they translated this prouision of tythes for their ministerie from the Iewish Church vnto their owne Church) change the number of ten into another number beside more or lesse: For that God had no lesse manifested his will in sundry parts of the Scripture, as concerning this number, to be a number for the maintenance of his ministerie, than he had declared his pleasure as concerning that other number to be a day for his honour, challenging it euerywhere in the Scripture, in the very quotitie for his owne right, and counting it robbrie if it were at any time withholden from him. And therefore it may be well thought, the Schoole-men herein did great wrong to the Church, who by their quaint distinctions brought this certaintie to an vncertaintie, which is no where to be found in the Scripture. Which I am more bold to speak, for that I see some haue trod this path before me, and shewed by good demonstration, that the turning of this quotitie into a competence



tencie is a thing nothing warrantable by the word of God, but that the quotitie ought stil to stand as a perpetuall right due to God and his Church. But hereof hitherto.

And so hauing passed ouer this whole prouiso of Law, Statute, Priuiledge, Prescription, and Composition, I might well leaue the turning of this stone any more, but that yet there remaineth one Prohibition of prescription to be handled, which in my fancie is worse than all the rest, for that it draweth away from the Parochian Church her maintnance, and transferreth it vpon lay men: and that which worse is, it makes Bishops to be instruments hereof, who are to be Pastors and defenders of Churches, and not pillers or powlers of the same. And yet the authoꝝ thereof doe embrace it and kisse it as a golden birth, or as if that Iuno her selfe had bene present at the Parturitie thereof. And the deuise is this.

A Bishop being owner of a Manor yet not diuided into Tenancies, nor hauing any Parsonage erected vpon it, ordereth the one and diuideth out the other: here the Bishop being seised in the whole Manor befoze the said diuision, because he is a clergie man, is supposed to be in possession aswel of the Tythes as of the Manor it selfe, and therefore after creating a Parsonage, and diuiding out his Tenancies, may retaine and keepe to himselfe, and his said tenants, so much of the said Manor discharged of tythes as him listeth, and assigne ouer the rest for the maintenance of the Minister, and that his tenants after may challenge exemption from tythe, as the Bishop did, for that they were exempted by his capacitie while they were in his owne hand.

Neither of which is so by Law: for insomuch as a Bishop is an owner of a Manor, and is a prime-founder of a benefice, he hath no more right to the Tyth thereof than a mere Lay Patron hath, who for his zeale to the Church, and to incourage other to be like affected to Gods Religion as himselfe is, may haue some small pension assigned him and his for euer by the Bishop out of the same benefice, in acknowledgement of the erecting, founding, or endowing thereof:

*Attorū 5.*

*Ca. quamuis de  
decimis. & ibi  
Abum. 5.*

*Ca. na nobis de  
decimis.*

but for any portion of Tyths to him or his, he could neuer retain any, nor can to this day, neither yet can the Bishop himselfe, vnlesse perhaps he will be like to Ananias and Zaphira, which held part of the price of their ground from the Lord, and were worthily punished for the same. And as they cannot detaine it themselves, being spirituall men, so much lesse can they passe it ouer to any Lay man, for that Lay people neither by Gods Law, neither by the Canons and Decrees of the Church, were euer capable of them: yea, it was so far off, that euer any Bishops durst infeoffe any Lay man in Tythe; that who so did it, was to bee deposed and excommunicated vntill such time as hee restored the same to the Church againe. And to say the truth, Tythes were neuer at any time in Bishops as in Fee, but in verie few cases, as were the Bishop had a Parish himselfe distinct from other Parishes, for sundry Bishops in sundry places had so, and then the Tythes of the Parish did belong vnto them in such sort as they doe now belong vnto the Incumbents thereof: Or if the Tythe were not within any Parish, for then in like sort it did belong vnto the Bishop of the Diocese, in whole Territorie it was, albeit now within this Realme it belongs vnto the King: Or where the Parishes were vndistinguished, for then were they the Bishops, not to conuert vnto his owne vse, but to diuide among the Ministers and Clerkes which laboured in the Diocese vnder him, in Preaching, Teaching, Ministering of the Sacraments, and executing of other Ecclesiasticall functions, euery one according to his desert: Or that it were the fourth part of the Tythe, for then did it belong to the Bishop in Law, towards his owne reliefe, and the repaying of the Parish Church where they grew, and not to confer or bestow the same, as him thought best; which notwithstanding now also is growne out of vse, and nothing left vnto the Bishop from the Churches of his Diocese, beside his Procurations and Synodals to be paid by the Incumbents in the time of his Visitation. Beside which cases, it cannot bee found that euer any Bishop had



had to doe with Tythe, much lesse to alien, dispose, and transference the same as him listed, and to whom him listed.

For it is verie certaine, Bishops indowments themselves, in the beginning of the Primitive Church, stood not in Tythes, but in good Tempozall and finable Lands, which gracious Princes and other good benefactors of former Ages bestowed vpon them, as it doth appeare out of the first booke of the Code; whereas sundry Lawes of Constantine the great, and other gracious Emperours, euen vnto the time of Iustinian himselfe are recordeed, both for the conferring of Lands vpon the Church, and those, such as should neither be barren, neither charged with Statutes, or other debts of the Erchequer, as also for the conseruing and safe keeping of such Lands as were in such sort conferred and bestowed vpon them: & is manifest also out of our owne Stoories, both in Britains time, during whose Raigne there are reported to haue bene fiftene Archbishops in the Sea of London well indowed with possessions, and if they were Archbishops, then must necessarily also follew there were Bishops, for that these are respectiue one to the other. The like is written of the Sarons Raigne, vnder whom the Sea of Canterburie, the Sea of London, the Sea of Rochester, and the Sea of Yorke (for these foure were first set vp againe after the Sarons first receiued the faith at the Preaching of Augustine, Melitus, and Iustus Paulinus) are namely reported to haue bene enriched with large Dominions and possessions, giuen to euery of them for their maintenance. And what courie hath bene held with Bishopricks erected since the Conquest, the ruinated state of them and others doe shew, among whose auncient liuelod is not to bee found any indowment by Tythes, but such as of late haue come vnto their hands, and that for the most part, by change of their good finable Lands for impropriat parsonages. And therefore much to blame are some of our time, who (whenas their predecessors in former ages neuer admitted of any impropriat parsonage into their

*c. de sacrosanct.  
Eccle. & de Episc.  
& clericis 109. 21.  
sul.*

*Authent. multis  
magis C. de sacro  
sanct. Eccle.*

*Iocelin of Farne  
in his booke of  
British Bishops.  
Stow fol. 37.*

*Hen. Hunting-  
ton lib. 3.*

*Charta regis  
theob. ii. &  
charta Will. pri-  
mi.  
Stow fol. 77.*

*Homer, Illiad. 6.**Regum 1. c. 14.*

their possessions, but only in such cases as haue bene befoze remembred ) for the name and place of a Bishop will be content to make Glaucus change with Diomedes, that is, giue their golden Armour for the others brassen Armour : or doe like as Roboam did, who in stead of the golden shields that his father Salomon did hang vp in the Temple, put in their places Shields of brasse: for the change is no better, and so well know they that procure the same, otherwise would they neuer so instantly desire it.

And thereloze an vnsubstantiable deuise was that, and contrary to the course of former Ages, which was procured in the first yeare of the late blessed Queene, not ( as I thinke ) by her owne seeking, for she (good Ladie) did in this as she was directed, but vpon some other policie; that it should bee lawfull for her to take away so much fineable Lands from any of the Bishops as her pleased, and to giue them back againe in lieu thereof Tenths, or Parsonages impropriat: which hath patcht them vp againe but with vnsubstantiable peeces to their coate; whereby they are both brought into obloquie, as though they detained the due prouision of the Parochian Church from it, and are set in a way ready to be ouerthrowne if euery bird haue his owne fether againe.

*Authent. de no  
alienand. aut  
permutand. reb.  
Eccles. &c. § si  
minus.*

And thereloze those good Emperours are most worthy of commendations, that when they had any occasion to make change of Lands with the Church, would still allow them the like in value or better: for a small gaine it is vnto a Prince for a few thousands of increase of temporarie benefices vnto his Exchequer, to draw a perpetuall losse vpon a Church or Bishoprick: for so dare ought the Spirituall State to be vnto a Prince ( vpon whom God hath bestowed so many Kingdomes, and other things of price as hee hath done, and put such an infinite number of people in subiection vnder his seete ) that he would not in any case be hard with God, but thinke euery greatest liberalitie towards God & the Church to be the best.

*Dec. § si minus*

*Authent. vt sup.* For certaine it is the Empire and Church doe not much differ the one from the other: for as the Empire doth gouerne the

the



the outward man, and frameth him by outward policie to be a good and loiall subiect to the state: So also the Church frameth the inward man by the word of God, and causeth him not only to be a dutifull subiect vnto his Prince, but also to be an acceptable seruant vnto his Maker: So that there must be aswell had an awfull care of those things that are consecrated to God, as there is a heedfull regard had of those things that belong to the good of the Common state: for the Church was not made of God for the Common wealth, but the Common wealth for the Church. And therefore most gracions hath bin the consideration of our deare Soueraign, who to stop all importunate suits made to Bishops, for the graunting away of any of their reuenues to himselve, or any other, and to meete with the too easie facilitie of many Bishops, in yelding vnto such suits; of his Christian and Princely pietie and care, hath made a Law, whereby to protect the Churches possessions from alienation or diminution, that they may remaine and continue, according to the true intent of their foundation to their successors for ever, to the vles and purposes therein limited.

But here is occasion offered by the example of our gracious King to wish that such as were authozs to the King, for the dissoluing of Monasteries, and other houses of Religion, had bin likewise counsellors to him for the restoring of all appropriated parsonages of Tithes, which were as it were in captiuitie vnder those houses of Religion, vnto their proper parishes from whence they were taken. Which had bin a memorable worke, & easie to haue bin perswaded the King, hauing so many great mountaines of temporalities and Seas of goods & chattels come vnto his hand: so that these spiritualties would haue seemed matters of smale account vnto him in comparison of those other great riches and possessions that came vnto him. Which if it had bin done, how blessed a state and Church had this bin, when euery congregation should haue had a sufficient prouision to mantaine a learned Preacher among them: for so was it by the first institution, and so continued till violence and superstition changed it. But I

*Anno primo  
Iacob. Regis  
cap. 3.*

feare those men which began this worthy worke, had not such a sincere minde towards Almighty God in this reformation, as they ought to haue had, but that they sought therein their owne aduancement more than they did the glorie of God; which I doubt me, lest God hath remembred, in some of their posteritie, which being left in great state, haue eyther so vanisht away, as that their place is scarce to be found, or else doe so continue, as that their posteritie euer since hath bin as it were in a minozitie, so that they are as though they were not, great in place, but smal in reputation: yea, the thre fayrest bzanches or boughes that euer were in the world, issuing out of that tree, vnder whose shadow all these things were done, are quite gone, and liue by no other posteritie, but by their owne worthy fame and glorious acts which they did in their life time; which also now being gone, doe follow them, & so shall doe vnto the worlds end, for they were all thre memoizable worthies in their place. So dangerous a thing it is to mixt our owne ambition, or any other carnall consideration with Gods glory. But God be thanked such is the careful consideration of our most gracious Gouernor, that now is, in this behalf, that it may be hoped, that God will remember him, and his posteritie in goodnesse, according to all that good that he hath done for the Church, that he and his posteritie after him, may sit vpon his seat so long as the Sunne & Moone indures: for certainly his godly and gracious comportment, hath been such hitherto, as that he may be verily thought to be a man according vnto the hart of God, as Dauid was. But now to the losse that comes to the Church by these impropriations.

Whilist the Parochian Churches stood in their essentialities, that is while they did enioy the naturall indowments due vnto their place, that is, all manner of Tythes, and other Ecclesiasticall dueties, growing & arising within the compassse of their Parish, due by the word of God, they preached vnto their congregation, they prayed for them, they ministered vnto them the Sacraments, they kept hospitalitie among their Parishioners, and releued the poore, so far as their



their portion would reach vnto; which was a comly thing to behold, acceptable to God, comfortable to their Parishioners, & conuenable to their calling: but after the same were appropriated to Religious houses, these good courses were much disguised: for albeit those Religious men, to whom these Parochian Churches were annexed, did much pray for those congregation, as they pretended, from whom they had the fat of the Benefices, yet they preached little to them, kept small hospitality among them, or did any other spiritual work belonging to any Pastoral charge; yet notwithstanding the whole institution for which benefices in the beginning were erected, was not altogether extinct in them, but there was some outward shape or forme of the first ordinance left them, so far forth, as that they made continual prayers & intercessions to God for them: but when it came once into the Laities hands, there was not so much as a footstep left of the first institution, for they neyther preach vnto the people, pray for them, nor keepe any hospitalitie among them, but spend all the whole reuenues of the Church vpon their priuate bles, which many times are unfit for such Spirituall prouision to be spent in: so that for the benefit of the Church, the returne of them might be well wisht, albeit in so far as they are perplexed and intricated by the Lawes of this land, with priuate mens states, it would be hard to be performed; for the changing of them would be much like, as if a man should moue one stone in a vaulted worke, such as the stonie roofes of many Cathedrall Churches and Colledges are, where the taking of one stone away is the ieopardie of the whole buylding: But yet let those to whom this doth appertain, consider whether in this it were better to please God, than man.

But now to returne thither where I left: as euery good Bishop, or any of his Clergie, did wynn any countrey village, which the Latins call Pagus, to the Faith; so they erected vp a Church there, and appointed a Pastor, or Minister ouer them, to informe them in the Law of God, and to minister *Hospinian de origine Monachatus* the Sacraments vnto them: and set out for his maintenance the Tythe of that Page, or Village, to which he was assign-

ned Pastoꝝ: which they did in Tythes, rather than in any other pꝛouision, both because it was the Lords inheritance in all ages, and appointed by him foꝝ the maintenance of such as serued in his Tabernacle, during the dispensation of the mysteries of the Law, & now was returned again into Gods hand by the expꝛiation of the demise of them made vnto the Leuites, during the said time of dispensation; and also because the people would be the moꝛe easilie induced to part with one part out of euery ten, of all the fruites of their grounds, and labours of their hands, vnto the Minister, than if there had bin any other regular imposition laied vpon them: foꝝ certein it is, Villages & Pages came moꝛe hardly and moꝛe lately vnto the Faith, than great Townes & Cities did; and therupon grew that name of opposition, which was betwene Christians that dwelt in Cities, & the Infidels that dwelt in Pages, that the one were called Pagans, the other were called Christians, taking their names vpon the difference of the places where they dwelt. But from these Pages, (as I haue said) came first the vse and practize of Tythes in the Christian world, insomuch as after when any Law was made, as concerning Tythes, they held them euermoze foꝝ a Parochian right onely, & in no sort at the disposition of the Bishop, but in such cases as befoꝛe is rehearsed; insomuch, that if a Bishop challenged any Church in his Diocesse, he challenged it not in respect of any æ simple he had in it, but in regard of the Spirituall Iurisdiction he had ouer it. And therfoꝛe the Authoꝛs of this opinion were far out of the way, when as they thought the Bishop had like right in the Tythes of a Church of his Patronage, to giue & bestow them as he listeth, as he hath in his demeanes, and other his Tempozall lands, eyther to lease them out, oꝛ diuide them into Tenancies, as him best liketh.

Peꝛther is that case cleere oꝛ without question whereby they pretend, a Bishop being seised in a Mannor, may pꝛescribe the Tythes of the demeanes therof, by an immemorial pꝛescription foꝝ him & his Tenants, and Farmers foꝝ yeares, and Tenants at will, to be exonerated, acquitted, and priuileged

*Ca. Cum contin-  
gat de Decim.  
verb. de iure  
coꝛm glos.*

*Ab. ca. nuper de  
Decim. et ca.  
deputati de Iu-  
dicijs num. 16.*



ledged from all Tythes growing thereupon : which if it be against an other person than himselfe , may hap to be true, although perhaps also that be questionable, for that it is not long since Lay people were capable of that right ; neyther could themselves by Law of the Church at any time graunt such Spirituall rights as these are, to a Lay man, either in Feudum, or Emphiteusim, without danger of Excommunication, or deposition of their owne place, as hath been before shewed . But if himselfe, or his predecessors were Parsons there, either in the right of their Bishoprick, as hath bin of late before remembred, or that the Benefice was annexed vnto their Sea, for the prouision of their Table, as many Bishopricks had some one or more benefices appropriat vnto them to this purpose, then could they not prescribe the Tithes in such sort as is pretended : For albeit no prescription proceeds without possession, yet no man can prescribe against himself, although he be in possession ; for that euermore there must be two persons in a prescription, the one which doth prescribe, the other against whom it is prescribed ; and therefore in these cases it is neuer said, they hold their Tythes by prescription, but in the right of their Church, or Parsonage . In eyther of which cases, if they were Lords of the Mannor, & Parsons of the Parsonage together, it is not to be thought they would so respect the good of their Farmer, as that they would either hurt their Church, or preiudice their owne Table, for their farmers sake : which they must doe, if they suffer a Prescription to run against the Church, or themselves, to exempt the demeanes of the Mannor from payment of Tythes, which were due both to the Church, & themselves : For they were men, that both knew in their conscience, how much they were bound vnto the Church in this behalfe ; & they were not ignorant what preiudice they should doe vnto themselves, if by prescription they should yeld to exempt so necessary a prouision for the maintenance of their Hospitality, as the tithes of the demeanes of a whole Mannor, & their tenancies are : for no small part of their commendation stood in those dayes in their hospitalitie, & therefore it is not to be presumed that they

*Ab. ca. ad hoc  
de Decimis nu-  
mer. 4.*

*Ex Registro  
Archiepi Cant.*

they would easilie cut off any prouision that was fit for the same. Beside, if by either of these two wayes, the Bishop were Parson in the place, then did the fruites of the Benefice, during euery Vacation of the Bishoprick, not come to the King, as they now do, wherby the Parsonage & Pannoz are both consolidated into one, for that they are now both holden to be Tempozalties; but the Parsonages came to the Archbishops of the prouince, as a spiritualtie granted to his See by priuiledge, during the vacancie of the Sees of such Bishops as were in his Prouince, as may appeare by the Lord Archbishops Records of Canterbury, so that it cannot be thought any prescription could run in these times, being so often interrupted by vacancies as they were. Which being well considered, the conclusion is very doubtful, whether euer any prescription ran in this case, neyther would it easilie be beleued by those that know the course of Antiquity, but that there hath a Iudgement passed in this part, & therefore will I stay my selfe here, and prosecute this point no further.

*Erastus tractat.  
de ortu Metallu  
lor. 173.*

I intended to say nothing in this treatise of the Liches of Minerals, & other subterraneous bodies, because I know by Law, they are holden by the like right, as the Liches of those things are, which grow in the vpper face of the earth; but yet because I see there is a question made of them, by some that will make euery thing controuersable, that is due vnto the Church, I will satisfie also their curiositie: And therefore, for Mettals, & other substances which are digged out of the bowels of the earth, & therefore are called Fossilia, this is certain, that what God worketh here in the superficies of the Earth, for those things that spring out of the earth, by the heat of the Sunne, the temperature of the Ayre, & the influence of the Celestiall bodies; the same he effecteth below in the depth of the Earth, for the generation of Mettals & other subterraneous bodies by the heat & cold of the earth, that is included in the bowels therof: For by the heat, he raiseth vp vapors & exhalations in the matrix therof, as the matter of those subterraneous bodies: but by the cold, he dryeth, thickeneth, hardeneth, and indurateth the same into a Mettall, or Minerall, whereby



Whereby he giueth as it were a forme vnto it. And as the disposition of euery exhalation so compacted & drawen together is finer or grosser, hotter or colder, so is the Mettall or Minerall, or other subterraneous body more noble or more base: yea, somtunes by reason of this diuersitie of exhalations & vapors drawen together at one time, are diuers conditions of Mettals there confounded together, whereof some are noble, as Gold, Siluer, & Copper; some other are of lesse estimate, as Tyn, Lead, and such like. Neither do these grow only in the beginning, but they renew againe when they are digged vp, (as Trees & plants in the vpper face of the earth do rise out of the rootes & stemmes of those trees which haue bin cut down) if the place of their new generation be prepared accordingly: For whereas the place of their generation is far below in the Earth, nature of a certain modesty in her selfe, will not yeld to the generation of these subterraneous bodics, but in secret places, far remote from the sight of the Sunne, & the priuitie of other Meteozicall bodics, which are vnder the firmament. And by that meanes it hapneth, that these Minerall bodics are rarely knowen & perceiued to renew againe; for that being once exposed to the light of the Sunne, they are seldome or neuer closed vp againe, by reason of the greatnesse of the gulfe that is made in opening of them. But yet the nature of them is such, that if their bed were thereto prepared accordingly, they would conceiue a new: Which is a thing so notozious in Quarries of stone, which are lesse abashed at the sight of the Sun, & the presence of other Meteozicall bodics in their generation, that the Law it selfe, & other good Authoꝝ haue set it downe for an vndoubted experience, that being digged vp, they doe renew againe, by the nature & disposition of the mould wherein they are ingendered: For some earthes do as naturally yeld stones, & other minerals out of them, as others bring forth Cozne, Hay, & other fruites: which if it be true in those bodics which are in the vpper crust of the Earth, why not also in those bodics which are found & framed below in the Matrix therof. And if these bodics do both ingender & renew, which are conceiued so far below in the Pauell of the earth, why

*ff. Soluto Matrimonio, l. fructus eos. §. 13. Plin. lib. 36. cap. 15. et 18. de naturalis Histor.*

*Strabo lib. 5.*

why is not **T**he due of them, as well as it is of other fruits that are in the summitie or hight of the earth. Whether is it that Gods hand lesse laboureth in the p<sup>ro</sup>creation of these subterraneous bodies, than it doth in the ripening & quickning, of that fruit that springs out of the vpper face of the earth? But that is far otherwise, for here in these vpper fruites, one planteth, another watereth, and God only giues the increase: But in the other Minerall bodies, God alone doth all, for he only is the planter, he is the waterer, and he giues the increase alone. **N**o is it that God hath lesse delight to be honozed with these hid treasures of the earth, than he hath to be worshipped with the labour of the plow, or the increase of the cattell of the field? But that this is not so, it is plaine by the glorious Temple that Salomon made, which had not only Cedar trees for the roose therof, and Algummin wood for the ornaments thereof, but also had quarrie stone for the walls thereof, & gold of Paruaim for the beautifying of it, & for the ouerlaying of it within. And of all other kind of Mettals, gold is first remembred in the Scripture, immediately after the creation of the world, so that God himselfe may seeme to haue a special regard of this Mettall aboue the rest, for that this alone aboue all the rest, by purifying is not diminished. **N**o is it that God loneth his Ministers lesse than other men, so that he would haue the Laity to haue al the precious things of the earth, & his Ministers to haue no part of any other thing, but that which is bulgar & common? But how vnlikethat is, who sees not, when he seeth that God hath committed vnto them, the inestimable treasures of his word; in comparison whereof, both these vpper fruits of the earth, & those hid treasures below, are mere dross & corruption: and therefore it is not like, when he hath committed vnto them those great matters, he would deny vnto them these smaller blessings. **N**o is it that there hath bin paid tyths of the vpper fruit of the earth already, & therefore cannot **T**he be twice demanded of one ground in one yere, according to a new ouer ruled doctrine? But that opinion is both contrarie to Law many hundred yeares obteyned in the Church without contradiction,

2. Chro. ca. 2.

Genes. 2. vers.  
21. & 12.

Ca. en parte de  
Decimus, & ibi  
Ab. 18.



tradition, whereby it is ordained, that as often as the earth fructifieth in one yeare, so often shal Tithes in the same yeare be paid of it: & also it is contrary to Diuinitie & reason that it should be otherwise. For when as God hath giuen thee more Harvest or more Tinctages in one yeare, is it not both godly and reasonable, as God hath increased his blessings towards thee, so thou also shouldest rise in thankfulness towards him? For, wher euery one hath receiued more grace or more fauor, there ought he to be more thankful, lest God for lack of this correspondencie in thankfulness, bring thy nine parts, for thine ingratitude towards him, to a tenth onely. For certainly so he is able to doe by sending deluge and drought vpon the earth, by bringing barrennesse vpon it, by destroying that which is sprung out of the earth already, by storme and tempest, by the grasshopper and the caterpillar: for all this hath hee threatned to all those that are vnthankfull this way, neither is the Lords hand more shortned now than it was then. Whereas notwithstanding to the contrary, hee hath promised great kindnesse vnto such as shall pay their Tithes truly and cheerfully, as that he will open the windowes of heauen and powere out his blessings without measure vpon them. *Hilarem enim datorem amat Deus.* Beside this, that earth that bringeth out mettals in the Matrix of the earth, is not that that bringeth out cozne and grasse in the top of the earth: for that earth that is the mother of mettals, being prest downe far into the bowels of the earth, can yeeld no sustenance to those fruits that grow so many fathoms aboue it, to which it confers nothing saue that it doth support and bear vpon that other earth, which nourisheth the plants and fruits of the vpper earth, whose sustenance is not fet deepe out of the earth, but is suckt out of that earth which is within one cubit or two of the top of the earth: which may be easily perceiued by those fruits and trees that grow vpon hard rocks neere to the top of the earth, whose food, although it be neere vnto the top of the earth, yet doe they flourish and stand fast, as other trees and fruites doe, which haue more fat and deepe mould vnder them, And there

foze cannot the Tything of those things which are aboue, excuse the Tything of the treasures that are below, albeit the conclusion were true, that two thing are not to bee paid out of one ground in one yeare, for these are neither one ground, and the conclusion it selfe is erroneous, and therefore I conclude this point thus: Since Mettals and Minerals, and other subterraneous bodies are in no lesse Obligation to God, than other fruits of the earth are, there must be no lesse tiths paid of them, than are of other fruits of the earth; for that these are the inward fruits of the earth, as well as those are the outward, and therefore of like things, there must be like iudgement and like consequence. And thus much as concerning the Tythes of Mettals and Minerals.

And now because I am in this matter of Tythes, I will shape an answer to one doubt that is made, as concerning the Tyths of Turues, that is, of earth disposed and prepared for felwel, which are said not to be tytheable, & that vpon this reason: That Tyths are not paid of the earth it selfe, but of those things which spring out of the earth: which opinion is true, if it be vnderstood of earth not seperated from the bodie & masse of the rest of the earth. For if Tyths should be yearely paid therof, as it is paid of other things that grow out of the earth, all the whole earth in a short time would become the Clergie. But if it be meant of earth that is seuered from the rest of the masse & globe of the earth, then is it otherwise. For that earth that is thus seuered from y other earth is no more part of that earth from whence it is seuered, than a mans hand or leg being cut from the bodie, is part of his bodie after it is cut off from it. And therefore of this earth so prouided for felwel may Tyths aswel be paid as of any other felwel of wood, cole, or otherwise that is prouided to be burnt. For there is one reason of things when they are vnited together in one bodie, and another of those things when they are diuided from the same body: for so long as they are in one and the self same body, they follow the nature of the whole, but when they are diuided, then is there another consideration of them. *Seperata enim est ratio, & ex seperatis non inferitur de uno ad aliud.*

*L. finali. ff. de causis  
luminariis.*



*aliud.* Cozne, Grasse, and such like, while they stand are not Tythable, although the tythe then is in them *pro Indiviso*: For while that they stand they are part of the earth vpon which they stand, and therefore so long vntithable, because the earth it selfe is vntytheable. But if they be cut downe, then are they to be Tythed, because they are now no longer parts of the earth, but bodies by themselves seperated from the earth, so that now the not tything of them is penall: Of which sort are turues seperated from the rest of the masse of the earth. Neither is this my opinion alone, but it was Linwoods long agoe, and other Ecclesiasticall wryters, who not only make Turse Tythable when it is prepared for fire, but also great rods, and smal twigs, sticks, & chips of timber, butts and rotes of trees, thornes, byers, walnut shels, and nut shels, wæds, coles and cole-bzands (called Titiones, because they are so burnt as they shall not make a smoke) colwshards, which the Law calls *Editus boum*. All which a man can vse to no other purpose than to burne: for where wood lacks, these succeed in place of wood, & are called by the name of wood, & are in like Obligation, as concerning the Tythe due therout, as wood it selfe is; *Vbiunque enim est eadē ratio, vel eadē aequitas, ibi debet esse eadē iuris dispositio.* And therefore not in that, that Turues sometimes were gremiall earth they are to be discharged of tythe: but in that they are accounted for felwel by the law, when they are so prepared to be burnt, they are to pay tythes in like sort, as other things applyed to that vse do.

*Provinciali de  
decim. c. sancta  
& ibi Linwood  
verbo turbarū.*

*L. Ligni appella-  
tione §. 4. 5. &  
6. ff. de legat. 3.*

*L. Illud. ff. ad  
legem Aquilā.*

And so far as concerning the Prohibitions which arise out of this prouiso. Now it followeth that I speake something of the next prouiso, which is concerning the Tythes of barren heath, and waste ground, and the Prohibitions thereupon.

This prouiso hath two branches, the one for comparative barren, heath, & waste ground, the other for absolute barren, heath & wast, for either of which is assigned a time of 7. yeers, either for the payment of such tiths, as before the time of their improuement, and conuerting to errable, they were charged with, or for the free and absolute discharge of them from all manner of Tythes for seven whole yeares next after

their improuement ended and determined. For so I take the Statute meant, when as it made the one Tythable, the other not, for if otherwise they had bene both in one predicament of barrennesse, the Statute had not made one free from tithe for so many yeares as it doth, and charged the other all that time with Tithe.

For these two kinds of grounds, although the Statute say nothing, which is comparatiue barren, which is absolute, yet reason telleth vs, that is Comparatiue that hath a positive vnder it, and a Superlatiue aboue it: and therefore that is Comparatiue waste, barren, or heath, in respect whereof there is some ouer ground more or lesse, waste, heath, or barren, so that it hath simply and positively in it some condition of heath, waste, or barren: but if it hath nothing of any of these qualities in it, then is it neither heath, barren, or waste, howsoever long otherwise it hath lien vnumanured, and not turned to tillage: For it is not the turning of a ground to tillage that makes it heath, barren, or waste, but it is the ill disposition of the ground it selfe, subiect to these inconueniences, that causeth it not to be turned to tillage; for no man will willingly till that, where the gaine of the tillage will not quit the cost and labour of the husbandry, as for the most part it falleth out in these grounds they doe not.

Glos. L. licet. C.  
de locato & con-  
ducto verbo  
sterilitates.

Barren ground therefore simply, is that, which being eared, yealdeth not the seede againe, or at the most, yealdeth so smal aduantage for the tillage, as that the tenant after that he hath paid his Rent, hath not the worth of halfe his seed againe; much like vnto that ground whereof the Scripture speaketh, whose barrennesse is such, as being eared and sowed, neither the Sower filleth his hand, neither the Gleaner his lap, with the yeeld thereof. These grounds are not only called *Sterilia* of the Latines, but also *Infecunda*, *Infrugifera*, & *sine prole*, for the excessiue barrennesse that is in them: and the Greeks vpon like occasion tearme such conditioned grounds; *αργα, ἀγροα, στείρα, ἄφροα, καὶ ἀφροα*, in which sence, money not put to vsurie is by the Law called barren money, and Aristotle call-  
leth

L. si quis vsuras.  
ff. de eo qui pro  
sutore.



leth it fruitlesse money: for that money was not deuised ther<sup>e</sup> *Arist. 1. lib. poli-*  
 by to increase money, as greedy Usurers in all ages haue *ticorum.*  
 done, but that by the meanes thereof men might ease the dif-  
 ficulties, and necessities of change of one kind of thing for a  
 nother, as a horse for an ore, a sheepe for a goat, Iron for  
 brasse, and such like: for there is nothing that may not bee *Arist. 4. ethi-*  
 esteemed by money, and the vse of money is the uttering of *corum, c. 1.*  
 money, whereby it is commonly said, Money is lost by the  
 vse thereof, not that money doth perith or decay by vse, for  
 we see the cleane contrarie to that, though money goe tho-  
 rough a thousand mens hands, yet it is still of the same va-  
 lue, and remaineth in her proper essence or being: but that  
 the vse of money is in the laying of it out, and that by the vse  
 thereof, money passeth from him whose it was, and the pro-  
 pertie thereof goeth to another, and therefore as to the first  
 owner it is spent, & lost: without which losing, money naturally  
 gaineth nothing; for lay it vp in a cofer or chest neuer so long,  
 it will neuer be the more in number, although perhaps as *S. Iam. cap. 5. v. 3.*  
 James saith, It will gather a rust & canker, & that rust and can-  
 ker will bee a witnesse against them which so hord it vp from  
 the seruice of God and the common wealth, in the day of the  
 Lord: so then, as that money is barren, that lyeth still and  
 bringeth out nothing, so is that ground barren that beeing  
 tilled, yeldeth no fruit, or at the most, so little, as the gaines  
 will not recompence the charge.

Although heath ground, and barren ground be almost Syn-  
 onomies, yet to speake properly, heath is as it were an ef-  
 fect of barrennesse, for that there is no ground that bringeth  
 forth heath, but for the most part it is barren. And therefore  
 as heath it selfe is an vnfruitfull kind of shrubs, and is good  
 almost for nothing but for the fire; for that neither growing  
 or cut downe, it hath any beneficial vse at all for the common  
 wealth: so also the ground it springeth out of, hath neither  
 faicenesse to the eye, nor goodnesse to the yeld, but is com-  
 monly either a black sower ground, that hath no sweetnesse  
 at all in it, or is a dry hungry soyle, such as euermoze cryeth *Proverb. 12.*  
 giue, giue, and neuer restozeth ought againe.

**Waste** is that which for the vnfruitfulnesse thereof hath laien time out of minde vnmanured, in which sence it is all one with barren ground; or it is such ground as for the charge of hedging, ditching, fencings, and tilling no man will manure.

*E. commissum de  
decimis verbo  
inutilia.*

Our forefathers aunciently comprised all these three vnder one name calling them all by the name of Noualia, that is new broken vp ground not only because they were not broken vp in the memoire of man before, but also for that being eared, they yielded little or no fruit at all: and therefore the interpreters of the Law defining what Noualia are, say that they are such grounds as before the tillage thereof were inutilia; and example them out, in Mountaines, Marshes, Thickets, and such other vnprofitable ground, as out of which before the stocking of them vp and conuerting them to tillage, the Church took little or no benefit at all. And those are the same or cosen German to those which this Statute calleth heath, barren and waste; for they are one and the very self same with them, in all the chiefe points, for which they are excepted out of the Statute.

So then now, there is no further question what is heath, barren, and waste ground, but who shall trie the matter of this qualitie, the Ecclesiasticall Judge, in whose continuall possession this triall hath bene vntill now of late, that vnder colour of this Statute, it hath bene incroched vpon, as it may appeare by all the Titles of the Ecclesiasticall Law, where there is any mention of the Tythes of new broken vp ground, and the Decrees of the Lawgiuers in the same, betwene the Monasteries challenging them by graunt, and the Parochian Ministers of the Parish where they grew, claiming the same by right: Or the Temporall Judges, whose is the Cognisaunce of the Tytle and Tenure of the ground, as also is the setting, letting, buying, selling, and other alienating of the same.

For the point it selfe, the Statute maketh no mention, but passeth it ouer with silence; and therefore it is to be presumed that it meant, that it should there rest, where it  
was



was befoze the making of the statute:foz the statute was not made in derogation of the Ecclesiasticall proceedings, that were befoze; but in affirmance thereof, as the whole drift of the said Statute doth shew.

And if the Statute had meant otherwise, it would surely haue expressed it either in the prouiso it selfe, or after in the derogatorie clause; where it maketh an enumeration of such things as it intended should bee exempted from the tryall of the Ecclesiasticall Law, and by vertue of this Statute, should not bee comprised vnder the same, among which there is no word of this prouiso, or anie other in the same Statute befoze named.

Neither is it vnto the purpose, that the Common Law of this Land taketh knowledge of the Tenure and Title of Lands, and such other complements belonging to the same; for these things that are here in question, are no part of those Legall Essences, which the Law requireth to the Tytle and Tenure thereof, as is Fee simple, fee taile, and other of like nature, according to the learning of that Law, but these are certain accidents ouer and beside the Tenure of the land, which may be present or absent without the iniurie of the Tytle: as God many times turneth foulds into wildernesse, & springs of water againe into diness, & a fruitful land makes he barren for the wickednesse of them that dwel therein, and yet the Tytle or Tenure of the ground is not changed, by these changes of qualities, but remains the selfe same that it was: so that these things are no more subiect to the ordering of the Common Law, than it is in the Common Law, to iudge & determine what mould is white & what is black: what ground will beare wheat, what barley, what oats; for these things are no matters of skil of law, that they need to be fetcht out of booke, but they are matters of common experience which euery country man can as well skill of as the greatest Lawyer that is, and therefore the Law in this case is not desirous of any curious prowe, but contenteth it selfe onely with the depositions of two or thre honest men, which speak sensibly  
and

and feelingly to the point that is in hand, which is enough to direct any wise Judge in his sentence, so that it needs not these long circumstances of twelue men to teach the Judge what and how truly the witnesses haue deposed. For if e- uery qualitie of the ground resteth in the mouth of twelue men onely, then should no man bee able to say out of the mouth of a witnesse, and pronounce thereupon, this ground is mountaine, this is plaine, this is meadowe, this is errable, vnlesse he were warranted by the verdict of twelue men ther- unto: which if it be an absurditie to hold, then sure it is like absurd to say, that barren, heath, and waste cannot bee pro- nounced without a Iurie; for that these things are like obui- ous to sence, and like qualited as the other are.

And I pray you, when they haue drawne it vnto their triall, what doe they in effect otherwise than the Ecclesiasti- call Judge would or should haue done, if it had remained stil vnder him? for doe they giue credit simply to the conceit of the Iurie, as touching that which hath bene declared and pleaded in the cause before them, or doe not the Judges them- selues rather make a brieve of all that hath bene pleaded in the cause before them, and thereof make as it were a verdict, and put the same in the mouth of the twelue for their verdict, before they goe from the bar? So that the whole weight of the cause standeth rather in the Judges direction, in such sort as it is at the Ecclesiasticall Law, than it doth in the mouth of the Iurie; for the Iurie men for the most part, are simple people, & scarce foure of the twelue vnderstand their euidence: so that it may seeme rather to be a matter of superfluitie than of good policie, to refer a matter to their verdict, when as they say no other thing, than that the Judge taught them before; *Stultum enim est id facere per plura, quod fieri potest per pauciora:* for albeit perhaps some capizious fellow of the Iurie, vpon the confidence of his owne braine, sometimes start aside from that which the Judge hath told him, and draw the rest of his fellows, as so many sheepe, after him; yet for the most part the Judges voice is their direction, their loadstone, and and North pole to guid them in this businesse.

Besides



Besides, in this Proviso, as in some other precedent, there is a great disadvantage offered to the Clergie, which they much complaine of, and that is, that in cases of this nature, they are compelled to suffer triall vnder them, who are as in a maner parties vnto the suit, by reason of the interest they haue therein, either in present, or in consequence; so that many now a daies (learning too late by other mens harmes what the event in their owne cause wilbe) chuse rather to lose their right, than to venture their cause vpon such partiall Judges, as the 12. men are.

And so far as concerning those prohibitions as are forced out of this Statute, for naturally they grow not out thereof: so that I might now passe ouer to the other branch of my diuision, that is of such matters as are now held by the Common Lawyers, to be in a certaine measure only of the Ecclesiasticall proceeding, but were aunciently wholly of the Ecclesiasticall cognisance; but that the name of the Statute, De Syluacædua, offering it selfe vnto me in the conclusion of this Statute of Edward the 6j. giues me occasion to speak something thereof, before I come to the rest.

This Statute as the words thereof doe shew, was made in behalfe of the Laitie against the Clergie, for the exemption of great Woods of 11. yeeres growth, & vpwrd, from the payment of Tythes; and that in three cases only, where the wood was great, where it was of 11. yeeres of age and vpwrd, where it was sold to Marchants, eyther to the profit of the owner himselfe, or in ayd of the King in his warres; so that without these cases, it seemeth the Statute intended no further exemption: for Statutes are things of strict Law, and are no further to be extended, than the words thereof giue matter thereunto, specially when the thing it selfe naturally was lyable to ordinary course of the Law, as other things of like nature are, and the Statute comes in derogation of their ordinary course: as in this case, great timber aunciently was no lesse tythable than small trees are, and so by nature ought to be if the Statute were not to the contrary; yet notwithstanding these limitations of the same, if great wood be

cut down to any other vse then to sale, as to build, or to burne to a mans owne vse, a prohibition in this case lyeth, and yet is there no Identitie of reason to extend it, nor any absurditie would follow, if it were not extended, for here is neither money sought (which gaue occasion vnto the Lawgiuers to make this Statute of exemption) neither is it an vnnatural thing for to pay Wythes of great wood; for before this time they were paid, and by the Law of God it seemes they ought to be paid, for that he that is taught, ought to communicate to him that teacheth him in all things: and therefore since the reason that moued the Lawgiuers to order it so in one case, ceaseth in the other, there is no reason of extension, & when there is not an Identitie of reason, in the things that are in demaund, there can no sound inference be brought in from the one to the other, for of seuerall things, there is a seuerall reason, and a seuerall consequence, neither can there be framed thereof a good implication, eyther positiuely, or remouitiuely: neither hath this interpretation of theirs any warrant of Law for it, saue that it hath bin so defined and decided: but what is that to the purpose, if it hath bin wrested and wzonged contrary to the true sence of the Statute, and that by those that take benefit thereby, whose partiality being taken away, the thing it selfe would easily turne againe to his owne nature, and right would take place?

*Plewd. in Soby  
contra Molyns.*

The reason they yeld for the exemption of great woods of the ages aforesaid, although to themselves, it be plausible, yet to others it is strange, as namely, that great Trees are part of the Freehold, and that men vse not to pay Wythes of their freehold, but of those things which spring out of their freehold, as out of Cozne, grasse, fruit, & such other; whereas in deed the tallest Timber tree, that is, if it were as high as the highest Cedar in Lebanon, is no more part of the inheritance or freehold, than the lowest bzamble that groweth in the field; for they are both equally part of the ground wherein they grow, and do take a like nourishment and sustenance from the same, neither doe they differ in that they are trees the one from the other, secundum magis et minus, as the Logicians



tians say ; but in that , the one is a great tree , and the other a small shrub : and the cause of this prouision here in England for these great trees , was not for that one was more of the inheritance than the other , but for that the one yeldeth more profit to the common wealth , than the other , & therefore they haue made the cutting down of the one more penal , than the other : as in like case by the Ciuile Law , who so prauily cutteth downe , or barketh a vine , an olive , or a fig tree , *ff. Arborum fur- tim casarum , to 10 tit.* or doth any other vnlawfull act , whereby any fruitfull tree , or any Timber tree doth perish and decay , it is Theft ; and it is punished in the double value of the hurt which is done , and if he be tenant to the ground which hath done this villanie , he loseth his hold : which cometh not of that , that one kind of Tree hath more state in the ground than another hath , but that the Law hath respected , the necessarie vse of the one more than the other .

By the Ciuile Law , although this word Wood be general , yet it is thus distinguished , that some is wood , some is Timber , which the Law calls Materia . Timber is that which is fit to build or vnderprop withall : Wood is whatsoeuer is prouided for felwell , so that vnder that name there passeth Reed , Coale , Turfe , Cow dung , and whatsoever is any where ordinarily vsed for felwell . Timber is of a higher consideration than wood is , inso much as if a man bequeath vnto another all his wood that is in groue field , there shall not passe by this legacie such Trees as are cut downe for timber : but if they were dotted Trees , or the owner thereof purposed them for felwell , and so cut them cut into billet , or fagot , in such sort as there could be no other vse thereof than to burne , then it is otherwise : for by this meanes , of great wood , it is become small wood , as being cut out in shides , or splinters , fit for to burne . So that in the reckoning of the Ciuile Law , timber stands not onely in the nature of the wood it selfe , but is in the destination and purpose of the owner , who according to his good liking , may make that wood , which is fit for timber , fier wood , or tymer : which if it were so in account with the great

*L. Ligni appellatione de L. g. 3  
& L. Carbenum  
ff. de verb. significat.*

*L. ligni appellatione, § Ofiluo,  
& S. idem ff. de legat. 3.*

Lawyers of this land, the Church should haue more Tythes of Wood appointed for felwell, and lesse suite for the same.

*Plowd. vt sup.*

*L. Ligni appel.  
latrone S. Of-  
ficio de Leg. 3.*

*L. Fisi. C. de  
Prædys minorū.*

*L. i. ff de ventre  
inspiciendo.*

As they exempt the bodies of great Trees about xx. yeares growth, from payment of Tythes, so also they free the boughes thereof, vpon this reason, that the boughes thereof are fit and seruiceable for buylding, which although haply may be in some of them that are next to the Trunk of the tree; yet it is far other use in those that are more remote from the same, whereof there can be no other vse than to burne: and therefore the Law precisely holds, in case where wood is bequeathed, by which is meant fier wood only, vnlesse the Testator otherwise expresse his mind, the lops of timber trees, which the Law calls Superamenta materialium are bequeathed, for that the lops haue not that vse that the Timber hath, that is to buyld or prop vp withall, but they serue to burne ouely: by which seuerall ends, there is seuerall consideration and accompt made of them. Neyther is it to the purpose that they alleage for the defence hereof, that the accessorie folloiweth the nature of the principall, for that rule is not true in euery accessarie, but onely in such, in whom is the like reason as is in the principall, which in the trunk and lop of a tree cannot be alike for buylding.

Further, how the Boughes of a tree that are of the same substance, as the bodie of the tree is, should be accessaries to the tree, I see not, for nothing can be an accessarie to another that is of the same nature and substance as the other is; as the leg, or hand, are no accessaries to the bodie, for that the leg or hand are of the same substance that the bodie is: The Child, neyther while it is in the Mothers wombe, neyther after it is borne is an accessarie to the Mother, for while it is in the Mothers wombe, it is part of her wombe, and after it is seuered from her wombe, it is a man or woman like principall as her selfe is: But that which is an accessarie to another must be of an other nature than the principall is; so in naturall lyuing creatures, haire, hooves, hoynes, and finnes, and such other like excrements, are accessaries.



cessaries to the creature whose they are, for that they are of a far different nature, from the bodies, out of which they come: and so in other naturall things not lyuing, as the Earth it selfe is, the trees, grasse, and fruit that spring out of the same, are accessaries thereto. Further in Ciuile matters, expences and executions are accessaries to the causes out of which they rise: and in Marriages, Dowries and Jointures are counted accessaries to them, for that wythout Marriage, neyther ioynture, nor dowrie can stand. Usurie is said to be an accessarie to the principall, not in respect that the proper subiect of eyther of them is Money, and so there is one substance or nature of them both, but in regard of the dependencie the one hath of thother; for he that will make challenge to Usurie, must first proue there is a principall. But for the better clearing of these matters of accessarie and principall, we must know in bodies whose substance is all one; There are some partes like, which the Logicians call partes similes, some other vnlike, being likewise called of them partes dissimiles, which in no sort are accessaries one to an other, but make one continued bodie of both, which the Law calls *in similes*: Simular parts are such, as haue one substance, forme, and figure, as the trunke or bodie of a tree is all one in inward essence, and outward shape: Dissimular parts are those, which haue one inward nature with the other, but are diuers in outward shew, as the boughes and rootes of the Tree are diuers betwene themselues, and different from the bodie, and yet all agree in one substance, and haue all the generall name of Wood, whereby they are discharged from being accessaries the one to the other, and yet they are not vnder one capacite or seruice, or one comprehension of Law, because they are vnlike one to thother; and of vnlike things, there is vnlike reason, and vnlike consequence.

Now vpon these grounds to exempt Timber Trees wholly from the seruice of him, that is Lord aswell of the tall woods, as of the low shrubs, is verie hard, for though himselfe dwels not in houses that are made with mans hand,

nor hath any neede of tall Trees to repaire his Tabernacle, or prop vp his dwelling: yet since he hath left such behind him, as haue charge of his flocke, and feed them in word and worke, vntill he come, and they dwell in earthly habitations, as other men doe, and there edifices and buildings, haue need of repaire, in like sort as other mortall mens houses haue, being all in like manner subiect to rottenesse and corruption; great reason it had bin to haue allowed him some proportion of these great woods, towards his seruants necessarie vses, during the time of their seruice here, and if not in the very tenth it selfe, yet in the xxx. xl. or l. part of the same, that God thereby might haue bin aswell acknowledged to be the Lord of the great Dkes of the forrest, and that by him they haue there length, breadth, and thicknes, as he is accepted and reputed to be Lord of the small bzambles and bushes of the field: for as now the case standeth, God may either seeme to haue forgot himselfe, that he hath not made timber trees Tythable, as he hath done other smaller woods, specially hauing such occasion to vse them, both in the Chauncels of Churches that are dedicated to his vses, and also in the buyldings and repayzings of his Ministers houses, who supply his roome in their seuerall Congregations, vntill he retozne to Iudgement; or that may wel be objected against vs, in allowing such things for Tythes as vs please, and disallowing the rest, as was by that auncient father of the Church Tertullian objected against the Senate of Rome, who being intreated by the Emperoz Tiberius (for the strange wonders and Miracles he heard to be wrought by our Sauour Iesus Christ) that he might be intertaind among the number of their Gods, refused so to doe, for that they heard our Sauioz was a Jealous God, and did in no sort admit the societie and fellowship of other Gods; which this graue father hearing, (although many yeares after) said merily, although wisely, That God should be God, if Man would let him.

And thus far of those causes which are held to be absolutely of the Ecclesiastical cognisance, & yet notwithstanding are



are eclipsed by interposition of sundry contrary matters.

Now as concerning those things which haue bene accounted but in a certeine measure of the Ecclesiasticall cognisance, and yet notwithstanding haue aunciently in a manner been tried wholly at the Ecclesiasticall Courts, such as are matters of Diffamation, and matters of Bastardie, both which now a dayes are much challenged by the Tempozall Courts to be of their cognisance. But here first of diffamation, then of Bastardie.

To diffame therfore is as Bartol saith, to utter reprochfull speeches of an other, with an intent to raise vp an ill fame of him; and therfore himselfe expresth the act it selfe in these words, Diffamare, est in mala fama ponere. *Bartol l. turpia ff. de legat. 3.*

Albeit Diffamations properly consist in words, yet may they also be done by writing, as by diffamatory Libels, & also by deeds, as by signes, & gestures of reproch; for these no lesse shew the malicious mind of the diffamer then words doe.

Diffamatory words are uttered eyther in some scoffing or iesting maner, so as facete & merie men vse to do, to make the company merry wherein they are, or they are spoken by some that haue some weaknesse, or distemperature in their braine, eyther by drinke, phrensie, or other lightnesse, or by any rashnesse in their tongue, or they are poured out vpon some rancor & malice, by some that enuie an other, with intent to diffame him, and spzed abroad a matter of disgrace vpon him. *Linwood c. auctoritate verb. quacumque de causa iuglos. de sua ecc. comm.*

If they be spoken in a iesting maner to make the company merry, if it be in a fine sort deliuered, it is by the Greeks called *irexania*, and is by Aristotle held to be a vertue, although by S. Paul it is condemned as a vice; but if it be in homely & grosse sort deliuered, than is it accompted to be a kind of rudenesse or rusticitie; but whetherwaies soener they be uttered, there is for the most part no vantage taken of them, vnlesse therby there follow any discredit to the party vpon whom such iests are broken, for than are they not without blame, Noxius enim ludus est in vitio, neyther can that be called iest or sport, whereby a mans good name is hurt, or any crime imposed vpon him. *Aristot. 4. ethic. c. ansepenit.* *1 phes. 5. 4.* *Extra de pre. sumpt. ca. 1.* *ff. ad l. Aquil. li. 1. nam indu.*

The

*ff. ad l. Inl.  
Maieſtatis l.  
ſamoſi.*

*C. Si quis Imper  
ratoris maledi  
cerit.*

*Bohic. ca. Si colu  
pa de iniurijs.*

*Linwood pro  
uinc. de ſua  
excomm. ca. 1.  
Verb. malicioſe.*

*Bohic. ubi ſup.*

*Term' 12. H. 7.  
fol. 22. Reſiſt.  
pag. 49.*

The like may be ſaid of thoſe which ſpeak hardly of any by the lubricitie of theyr tongue, or weakenelle of theyr bzaine, who ſo that they are not thought, to ſpeake ſuch words malitiouſly, paſſe ſo the moſt part unpuniſhed, Lubricum enim linguæ non facile ad poenam trahendum eſt, no though a man in this caſe ſpeak ill of the Prince himſelfe: which is ſo far off from that, that the Ciuile Law takes hold of ſuch words in theſe caſes, that the Emperor himſelfe hath ſaid of them thus: Si id ex leuitate proceſſerit, contemnendum eſt, ſi ex infania, miſeratione digniſſimum eſt.

But if the cauſe of ſuch words be ranke or malice, then are they altogether to be puniſhed, ſo that there can be no iuſt excuſe made ſo them.

Such diffamatory words as proceed of malice, implice either matters of crime, or matters of defect.

Such as imply matters of Crime, either are ſuch crimes as it is expedient ſo the Common wealth to know, as Treason, Felonie, Murder, Inceſt, Adultery, and ſuch like, to the end they may receiue due puniſhment, whereby God may be pleaſed, and the Common wealth ſatiſfied: Or they are ſuch crimes or faults, as it is not expedient ſo the Common weale to be acquainted with; as where one calleth one Prodigall, or ſpend-thrift: ſo albeit it be expedient ſo the Common wealth, that no man miſſpend his eſtate, ſo that the Common wealth hath as it were an intereſt in euery priuat Subjects ſtate, yet this is rather his owne hurt, than any other mans, and that which he ſpends alway vnthriftily, commonly turnes to an other better Subjects gaine, whereby the Common wealth is releued in one, that it loſt in an other; and ſo the moſt part there is no great corruption of manners in the example thereof.

A great while it was beſore the Lawes of this Land tooke knowledge of Diffamations, as counting them things belonging to the Spirituall Law, ſo they were dulie proſecuted, as may appeare by certain Iudgements & conſultations which haue iſſued out thereon: but now let men proſe.



prosecute them neuer so duely, yet Prohibitions goe out on them daily, and sundry others are drawne to the common Law Courts by action of the case; wherein they haue so infranchised themselues, as that they take vpon them to confine the Ecclesiasticall Law how far it shall goe therein. Which limitations notwithstanding, as far as I can conceiue, are but distinctions without differences, and so are in very deed but bare Synonomies, that is, diuerse names expressing one thing: for all the words in the said limitation infer no more than this, that Ecclesiasticall men are not to deale in matters of diffamation, but where the matter of diffamation is only Ecclesiasticall; and yet I reuerence the authoꝝ thereof as a great man, and of like excellencie in this Law, as Papinian was in the other Law, & this I thinke to be commendation enough, for neuer any Lawyer in former age had more commendation, or eulogie of wit than himselfe had.

In the first of these cases, if a man proceed by ordinarie course of Law, either for the punishment of the sin, as by presenting the offender to the Ordinarie or indicting him before the Temporall Judge, or by admonishing him by any charitable denunciation, with purpose to amend him, and to recall him from such offensive waies as he is charged to walke in: Or doe any thing in Iudgement for the defence of his owne cause, as in objecting some thing against the party himselfe or his witnesses, either for the eleuating or discrediting the truth of the cause, or the testimonie of the witnesses; there can be no aduantage taken against him, for he cannot be said to diffame, which bleth the libertie the Law giues him: albeit in this case some aduise that a man shall object none of these matters against another in iudgement, but when his cause necessarily requires such things to be spoken for the defence thereof, and that the partie that objecteth them doe protest he doth it not with a calumnious minde, but that the defence of his cause otherwise would not be iustified.

But if any man doe any of these things maliciously, with  
 C c purpose

*Co. ad L. Iulianum  
 repetundarum. l.  
 1. & 2.  
 l. 1. de ordin.  
 cognition. c. dile-  
 ctus.  
 ff. de aqua plu.  
 arcenda. l. 1. §.  
 denique.  
 L. Procul. l. 1.  
 fluminum in jin.  
 ff. de dāno in-  
 fecto.  
 ff. de regal. iuris.  
 l. factum. §. non  
 videtur.*

*L. Labeo de su-  
pell. leg. at.  
C. de famosis li-  
bel. l. i.  
ff. ad. l. Aquile-  
am l. si ita vul-  
neratus.*

purpose rather to vtter his owne cankred stomake, than that he would benefit the common wealth thereby, then is he punish- able: for although it be behoueful for the common wealth that bad mens faults should be manifested, that so wicked- nesse may be punished, yet is it not fit they should be vttered in reproach and choller.

Of the second sort, although there be some that conteine pettie crimes, yet are they many times so friuolous, as that they yeeld no action: for friuolous and smal things the Law regardeth not.

For such Diffamations as rise vpon defects, if the defects be such that the contagion thereof is to be feared, vnlesse the people be forwarned of the danger that may ensue thereon, as in cases of Leprosie, the Plague, the French Pox, and other like infectuous diseases, and that it be reuealed with a sincere minde rather to cause men to restraints their companie for fear of the infection, than of any malicious humoz against the party, thereby to reproach him, it is no Diffamation. But if it be vttered in any spleene or choller against the par- tie defectiue, then is it actionable; for it is an vnciuile part to lay open another mans defects: but if the defects bee such as it nothing auaieth the comon wealth they should be known; as where a man objecteth against another any imperfection of his minde, or deformitie of his bodie, which hee had from his cradle, or hath happened to him by any accident without any default of his, and cannot be easily remedied; or repro- cheth him with any thing in his state or condition, where- with he is not iustly to be charged, neither is there any iust cause offered the diffamor why he should vse such disgracefull speeches against the other, than is it altogether punishable: For that such things tend onely to contumelie and despise, which the Law seeketh by al means to repress, for that ther- by charitie betweene man and man is violated, and the peace of the common wealth is many times broken and disturbed.

The proceeding in these causes in the Ciuile Law was of two sorts: for it was either *ad publicam vindictam*, or else, *ad pri- uatam interesse*, as the partie iniuried made his choice therof.

*Ad*

*c. quando &  
quib. quarta  
pars. l. 2. lib. 10.*



*Ad publicā vindictā*, was when the partie Diffamed, sought to haue the Diffamer recant his words, or to vndergo some open & infamous punishment for his rash & malicious speeches, wherby it might be publickly knowne abroad he did the other wrong.

But *Ad priuatum interesse*, was when he sought not the recalling of the slanderous speeches which were giuen out against him, but esteemed his credit at some great rate (as that he would not for a thousand pounds, or more or lesse quantity according as the worth and calling of the person is, haue had such speeches gone out of him) and so seeks to haue his credit salued by recompence in money, as the Judge or Iurie, vpon proofe of his worth and place, shall esteeme it and tax it. In these Actions, he that sued *ad publicam vindictam*, and had followed it so far, as that he had brought it to a Recantation, or a publicke disgrace, could not haue recompence of his credit by money, saue onely in case of commutation: neither hee that had got his credit valued by money, could haue a publike disgrace also inflicted for his satisfaction, but what way he had chosen, with that he must haue rested contented, for that irreful mens wraaths otherwise would neuer haue bin satisfied, & the prosecution of these actions otherwise would be confounded.

These two kinds of proceedings the Princes and Sages of former ages seeme to haue sorted to the two kindes of Iurisdiction that are amongst vs, the one Spirituall, the other Temporall: and therefore the Law of the Land it selfe saith in a cause of Diffamation, when money is not demanded, but a thing done for punishment of sin, which is all one, as when the Ciilians say, when it is done *ad publicam vindictā*, it shall be tried in the spiritual courts: wherupon by argument of contrary sense it followeth, that where the punishment of sin is not required, but amends in money is demanded, there it is to be tried in the temporal Court, for the law would that euery man should haue his remedy agreeable to reason in what sort him best liketh. And therefore be the fault what it may be, that the words of y<sup>e</sup> Diffamation do sound vnto, as long as it stāds but in words, & the party doth not take vpon him to iustifie the

matter that is comprised vnder those words, and doth seeke but for the punishment of the slanderous words only, so long it is to be tryed at the Spirituall Law; for the Law speaketh in generall in cases of Diffamation, where punishment of sin only is required: so that where a man is called Traitor, Felon, or Murderer, or any other crime belonging vnto the Common Law, being euery one of them words of great diffamation, so the partie therein seeke punishment onely, and not his priuat interest, there the Spirituall Law is to hold plea thereof: For where the Law doth not distinguish, there neither ought we to distinguish: but the Law hath said in general, that causes of Diffamation, whose prosecution is thus qualified, doe belong vnto the triall of the Spirituall Law: and therefore euen those cases before remembred where the party followeth this kind of prosecution, ought by that Law to belong vnto the Spirituall court, as on the contrarie side, Spirituall causes of Diffamation being propounded to a pecuniarie end ought to be ordered in a Temporall Court.

2. Edm. 3. c. 11.

But where any man takes vpon him to iustifie the crime that he hath objected, there either Court is to hold plea of the crime that properly belongeth to that Court, for that now no longer words are in question, but matter is in tryal, whether the partie diffamed hath indeed committed that offence that he is charged withall or no; which can bee tried in no other Court, than in that to which it doth properly appertaine. And that this was the Course aunciently held in matters of diffamation betwene the Ecclesiasticall and Common Law, it is manifest by the Statute of 2. of Edward the 3. chapter 11. where, although the Statute taxeth the peruerse dealing of such as when they had bene indicted before the Sherifes in their Ketorne, & after deliuered by Inquest before the Justice of the Assise, did sue the indictors in the Spirituall Court, surmising against them that they had diffamed them, and therefore in that case forbade the like suits; for that Justice thereby was hindered, and many people were feared to indict Offenders: yet that Statute plainly sheweth that in all other cases of Diffamation rising out of Temporall crimes be-  
side



And this, the Ecclesiasticall Law had the cognisance: and that this was forbidden, it was not for that, that words of this nature, could not be censured at the Ecclesiasticall Law, when punishment of sin only is required, but for that it was not fit that those things which had bene once ordered in one Court, should be called againe to examination in another Court: and therefore the generall proceeding in matters of Diffamation, is not there prohibited, but the particuler crossing of matters after iudgement is there reprehended.

So that, that distinction I haue here before spoken of, which taketh vpon it to determine when a case of Diffamation is of the Tempozal cognisance, & when of the Ecclesiasticall, cannot here take place: for that it is contrarie to the former Statute or Decree that diuided these cases into Tempozall or Ecclesiasticall cognisance by the varietie of the prosecution thereof, and that it is contrarie to the auncient practise that hath confirmed this prosecution in either Court, but specially in the Ecclesiasticall Court, which hath still holden the triall of such Diffamations wherein sin hath bene onely sought to be punished, vntill now of late, that men haue stept ouer the bankes of their authoritie and confounded either Iurisdiction with the promiscuous acts one of another; when as the Statute it selfe is plaine, that the authors of this Statute or Decree, whether soeuer you call it, which set these bounds to either law, in proceeding vpon matters of Diffamation, respected not so much the qualitie of the crime, vpon which the Diffamation grew, as the manner of proceeding therein, ayming in the one at publicke vindict, which is to be sought out of the Ecclesiasticall law, and in the other at priuat interest, which is to be had out of the Tempozall Law.

Neither is an Action of Diffamation, a matter of so light esteeme or qualitie (a mans fame or good name being in equal ballance with his life) as that it should be drawne away to be attendant on any other action that is of smaller weight or importance than it selfe is: for this is one of those Actions which for the speciall preheminence thereof, are called *Actiones praeiudiciales*, that is, such that draw smaller causes vnto them,

them, but themselves are drawne of none other, but such as are like principal or greater than themselves are. So that vnlesse the manner of proceeding bring these causes vnder the compasse of the common Law, in such sort as I haue before shewed the coupling of them with another matter of the same Law, will hardly bring them vnder the triall thereof: For that there be few actions greater than it selfe is, so that if the crime be Ecclesiasticall, howsoever it toucheth a Temporall cause, the tryall shall be still at the Ecclesiasticall Law. And the same that I say of Diffamations rising out of Ecclesiasticall crimes, I hold also to bee true in Diffamations springing out of Temporall crimes, where punishment is required for the offence committed, and amends in money is not demaunded, vnlesse happely that grow of penance imposed, which the offender wil redēme by giuing money to the Judge, or to the party grieved. And this I take to be a far better limitation for either Law, hauing the ground of the Ciuil Law, and a statute of the Common Law, and common reason it selfe for it, than the other deuise is, which so distinguisheth this businesse, as still it makes it rest in the mouth of the Judge, which cause of Diffamation is mere spiritual, and which not, which were not to be done if there were cleere dealing in the matter: for Lawes are so to be made, as that as little as may be, bee left to the discretion of the Judge, but all be expessed as far as the nature of the cause will giue leaue: which albeit it be hard to doe, for the varietie of the cases that euery day happen, neuer thought on before, yet that is to be laboured so far as may be; for this libertie of leauing many things to the Judges discretion, is many times great occasion of confusion in Iudicature, saying sometimes this and sometimes that, as his priuat humoꝝ shall lead him: and therefore a plaine distinction betwene both the Lawes were best, that euery man may see and say what is proper to either of them.

And thus far as concerning matters of Diffamation. Now followeth that I speake of matters of Bastardie.

Bastardie is an unlawfull state of birth disabled by diuine  
and



and humane Lawes to succeed in inheritance.

Of Bastards, some are begot and bozne of single women, (in which ranke also I put widowes) some other of married women.

Of single women some are such as a man may make his wife, if himselfe bee sole and vnmarrried, as those that are kept as Concubines in place of a mans wife; some other are such as a man cannot make his wife, although himselfe bee sole and vnmarrried, for that either they are already precontracted to some other, or that they be in so neere a degree of affinitie or consanguinitie one to the other, that the marriage would bee damnable, and the issue thereof unlawfull.

Of such as are begotten of single women, by single men, who are in case to marrie them if they will, some are called by the Ciuile Law *Filij Naturales*, because they were begot by such as they held for their wiues, and yet were not their wiues, who might be legitimat by sundry waies, as hereafter shall be shewed.

Some other begot vpon single women, if they were begot in bage lust, without any purpose to hold such a one for a Concubine, but vpon a desire onely to satisfie a mans present Lust, whether they were begotten by married men or single men were called *Spurij*, who for the most part are putatiue children, and their Father is not otherwise knowne than by the mothers confession, which sometimes saith true, sometimes otherwise. *Isidor* saith, they were so called because they were bozne out of puritie, for that such kinde of lust is contrarie to holy Matrimonie, whose bed is vndefiled, and therefore the other is corrupt and abominable.

But where any was bozne of a woman single or married, that prostituted her selfe to euery mans pleasure, and made publicke profession of her selfe to be an harlot, such as are they whom the Law calleth *Scorta*, these were called *Manzeres*.

Those which were begotten of married women were cald *Nothi*, because they seemed to be his child, whom marriage doth shew

shew, but are not, no otherwise than some feauers are called Nothæ, that is, bastard feauers, because they immitate the tertian or quartan feauer in heat and other accidents, but yet are neither tertians or quartans, as the learned Physicians wel know: but these are counted so to be bastards, if either the husband were so long absent from his wife, as by no possibilitie of Nature the child could be his; or that the Adulterer and Adulteresse were so knowne to keepe company together, as that by iust account of time, it could not fall out to be any other mans child but the Adulterers himselfe: and yet in these very cases within this Realme, vnlesse the husband bee all the time of the impossibilitie beyond the Seas, the Rule of the Law holds true, *Pater is est quem nuptia demonstrant.*

The most nefarious and last kind of bastards are they whom the Law calleth Incestuosi, which are begot betweene ascendents and descendents in infinitum, and between collaterals, so far as the Diuine Prohibition and the right interpretation thereof doth stretch it selfe.

The effects of these sorts of bastardies are diuerse.

First, it staineth the blood, so that he that is a bastard can neither challenge Honour nor Armes from the Father or Mother, so that he was begot and borne out of Patrimonie which is the first step to Honour: and therefore the Apostle calleth Marriage honorable, whereupon it must follow that the opposite thereof is shame; so, albeit it be no sin for a bastard to be a bastard, yet is it a defect in him to be such a one, and a thing easily subiect to reproch.

Secondly, it repelleth him that is a bastard, from all succession descending from the Father or the mother, whether it be in goods or Lands, vnlesse there be some other collaterall, promise made for the same: so that all such Lawes and statutes as are made to any of these purposes, were intended to the benefit of such as are Legitimat, and are next of kin by lawfull succession, and not by vnlawfull coniunction.

To Legitimat him that was a bastard, when there could no claime be made vnto his birth; right but by grace, among the



the Romans were sundry wayes; first where the Father of the Bastard, they being both single persons, married the woman by whom he begot the child; secondly where the father did by his last will and Testament, or by some publike instrument subscribed by witnesse, name him to be his naturall and lawfull sonne, or simply his sonne, without the addition of any of these two words, base, or natural, & therewithall did make him his heyre, which could not be, but in such cases only, where the father had no other naturall & lawfull child left alive.

Thirdly, whereas the Prince by his rescript, or the Senate by their decrees, did doe any one that credyt, as to grant them the fauor of legitimation, which was done for the most part in such cases only, whereas eyther the father of the child, or the child himselfe, offered himselfe to be attendant on the Court or Prince.

In this Realme none of the foresaid legitimations take place, as far as I can learne, but only that which is done by Parliament, and that verie rarely; for beside those that King Henry the 8. did in the varietie and mutabilitie of his mind, <sup>28.8.cap.7.</sup> towards his owne issue, I think there cannot be many examples shewed: for, as for that which is wrought by subsequent <sup>1. Mar. 1.par-  
liament, cap.1.</sup> Marriage, being a thing aunciently pressed by the Clergie of this Land, to be admytted in like sort, as it is vsed in other Lands, where the Ecclesiasticall Law taketh place; it was rejected by the Carles and Barons with one voice, and answers were made that they would not change the Lawes of the Realme in that point, which to that time had bin vsed and approued. All these cases of Bastardie in other Lands, whether they be such, or not such, are triable by the Ecclesiasticall Law; But here with vs it is questionable to what Law, and how far they doe appertaine, the Ecclesiasticall or Temporall.

For the matter of Bastardie, what it is, the Ecclesiasticall Law, & the Temporall differ not, but there is a diuersitie betwene them in the prosecution thereof, for the Ecclesiasticall Law bringeth it two waies in Iudgement; the one incident,

ly, the other principally, but the Common Law maketh two sorts thereof the one generall, the other speciall: But first of the Ecclesiasticall diuision, then of the temporall.

Bastardie is then said to be incidently propounded, when it is laied in bar of some other thing, that is principally contemned; as when one sueth for an inheritance that he pretendeth is due vnto him by his natiuitie, an other crosseth him therein, by obiecting against him bastardie, with purpose to exclude him from his action in the inheritance: here the bar is in the incident, because it comes exclusiue to the action of inheritance, but the action for the inheritance it selfe was in the principall, for that it was begun in consideration of the inheritance, and not with intent to proue himselfe legitimate; which happilie he neuer dreamed of when he first entered his action for the inheritance. In which case he which is charged with the bastardie, may require himselfe to be admitted to proue himselfe legitimate, before the Ecclesiasticall Judge, & to be pronounced to be such a one, Ad

*Glanuill Lib. 7.  
cap. 13.*

*9. Hen. 6. cap. 11*

Curiam enim Regiam non pertinet agnoscere de Bastardia: Against which the Law of the Land doth not oppose it selfe, but acknowledge it to be the right of the Church. And yet to auoid all subtil & surreptitious dealing in this behalf, it hath set downe a wary and cautelous forme of proceeding, by which the same shall be brought vnto the Ordinary, & such as haue interest in the suit, may haue notice therof, and time to object in forme of Law against the proofes and witnesses of him that pretends himselfe to be Mulier, if they so think good: and what shall be certified herein by the Ordinarie, as concerning the natiuitie of him that is burthened to be a Bastard, (that is, whether he were borne before or after his Parents marriage) shall be supplied in the kings Court, eyther by Judging for, or against the inheritance.

*Glanuill Lib. 7.  
cap. 15.*

But Bastardie is then taken to be principally propounded, when eyther one finding himselfe to be greued with some malicious speech of his aduersary reproching him with bastardy, or himselfe fearing to be impeched in his good name, or right, doth take a course to cleere his natiuitie, by calling  
into



into the law, him or them by whom he is reproched, or feareth to be impeached in his right and credit, to see him, to proue himself legitimate, & to alleage & obiect against it, if they ought haue, or can, to the contrarie: which if eyther they doe not, or doing to the vtmost what they can, can bring no good matter against his proue, but that it stands still good and effectuell in Law to all intents & purposes whatsoeuer (although perhaps hereby he shall not be able to carry the inheritance, both for that it apperteineth not to the Ecclesiasticall Law, to Judge of lands, tenements, or hereditaments, & also for that there is a precise forme set downe by statute, how suits of this nature shall be recovered) yet if no opposito, or contradicto, appeare herein, & the suit was only taken in hand against such, as eyther openly reproched him, or secretly buzzed abroad slanderous speeches, as concerning his legitimation: it is not to be doubted, but by an accident also it wil be good for the inheritance it selfe, for where a mans legitimation, is sufficiently proued, thereon followeth all things which naturally thereto belong. But if any man vse the forme of the statute, being interessed therein, then must it necessarily be followed, for that otherwise it would be thought, all that was done before, so far as it may concerne the inheritance, although it were but in a consequence, were done by collusion. This kind of proceeding hath bin much more in vse in former times than it is now, & neuer any opposition made against it: but now it goeth not altogether cleer without contradiction, as many other things are offensively taken, which notwithstanding haue good ground, & sufficient warrant for them.

9 Hen. 6. cap. 11.

And so far as concerning the Ecclesiasticall proceedings in this businesse: Now to the temporall sorts of them.

Generall Bastardie is so called, because it comes in incidently, and is in grosse obiected against some that sueth in a matter principall, to disappoint his suit. This suit because it is of the Ecclesiasticall cognisance, it is sent by the Kings writ to the Ordinary with certeine additions for more perspicuitie of the inquirie thereof; as that whether he that is charged with the Bastardie, were borne in lawfull Matrimonie,

*Lib. Intrac.  
fol. 35.*

monie, or out of Matrimonie, or whether he were bozne before his Father & Mother were lawfully contracted together in Matrimonie, or after. All which the Ordinarie makes inquirie vpon by his owne ordinarie and pastozall authoritie; for that matters of Bastardie doe originally belong to the Ecclesiasticall Court, and not to the Tempozall Court: And as he findes the trueth of the matter by due examina- tion to be thus, or that, so he pronounceth for the same in his owne Consistorie, and makes certificat thereupon to the kings Court accordingly; and as he pronounceth, so the tempo- rall Judges follow his sentence in their Judgements, eyther for or against the inheritance that is in question.

*Bracton.*

Speciall Bastardy they say is that, where the Matrimony is confessed, but the priority or posteriozitie of the Natiuitie of him whose byrth is in question, is controuersed; which to my thinking, if I conceiue aright, is no other thing than the generall bastardie, transposed in words, but agreeing in substance & matter with the other: for euen these things which they pretend, make speciall Bastardie, are parts and members of the generall bastardie, and are eyther confessed or in- quired vpon by vertue of the Kings writ in the same: For first for the Matrimonie that is here mentioned, it is there agnised both by the plaintife in pleading of it, and the defend- ant in the answering thereto, & therefore the plaintifes plea is thus; thou art a bastard, for that thou wast bozne before thy parents were lawfully contracted together in Marriage, or before their marriage was solemnized in the face of the Church; to which the defendants replie is, I am no bastard for that I was bozne in lawfull matrimony, or that I was bozne after that my father and mother were lawfully mar- ried together, in both which you see, there is a marriage con- fessed, & the question onely is of the priority or posteriozity of the natiuitie of him that is charged withall, whether it hapned before, or after his parents marriage, which as they hold is the other member of speciall bastardie: and yet this priority or posteriozitie of natiuitie, by vertue of the Kings writ, comes no lesse in inquirie to the Ordinary in the case of the



the generall bastardie, than they make it to be trauersable in the speciall bastardie; and therfore the writ to the Ordinary for generall bastardie is conceiued in this manner: viz. In-  
*Lib. Intrac. fol. 35.*  
*G. anuall Lib. 7. cap. 15.*  
 quiratis vtrum predictus A. pars rea, genitus vel natus fuit ante matrimonium contractum inter talem patrem suum, et talem matrem suam, vel post. So that eyther they must confesse there is no such bastardy, as they make shew there is, diuerse from that that is tried before the Ecclesiastical Judge, or that themselves do confound the members that should diuide the same, and make them one, or the other, as them list; for both simply they cannot be, vnlesse they be distinguished with other notes and differences, than hitherto I find they are. But to say the truth, if these things be well weyghed and considered, speciall Bastardy is nothing else, but the definition of the generall, and the generall againe is nothing but the definite of the speciall: for whosoever is bozne out, or before lawfull Matrimonie, he is a bastard, and he againe is a bastard that is bozne before or out of lawfull matrimony, so that these things to be a bastard, and to be bozne out of lawfull matrimony are conuectible one with the other: so then as it were very hard to make a diuorce betwene these things that are so nere in nature one to the other, being conuertible termes one to the other, so hard again it were in policie to disioyne these things in triall, that are so nere in affinitie one to the other, because they are the same in substance & nature as the other are, and therfore eodem iure censerī debent, then ne continentia causarū diuidantur, which is no lesse absurditie in Law, than it is a groinesse in other learning, to deny a principle, or generall Maximie of the profession.

*11. q. 54. 2. coga  
nomina.*

And so far hitherto as concerning the reasons & arguments, that may be brought against this speciall Bastardy. Now it resteth that I shew by ancient precedents, both these sorts of Bastardy haue appertained to the Ecclesiastical Courts only, and the first precedent is in the incident, the other in the principall: and the precedent is no lesse auntient than Henry the seconds time, as that which hapned vnder Alexander the third, about the yeare of our Lord 1160. & the case is this.

*Ca. Lator. ext.  
qui filij sunt  
legitimi.*

A certaine man of **Porwich** Diocesse called **R. V.** had issue **J. V.** who had a sonne called **C. V.** **J. V.** deceasing befoze **R. V.** his father, **C. V.** succēded in his Grandfathers inheritance, his said Grandfather being dead; but **M. V.** brother to the said Grandfather, pretending the said **J. V.** was a Bastard, draweth the said **C. V.** into the Tempozall Court vpon the inheritance, whereupon **C. V.** called the said **M. V.** into the Bishop of **Porwich** his Court, for the triall of his natiuitie; but the Bishop long protracting the cause, **C. V.** appealed to the Pope, who delegated the same cause to the Bishop of **Excester**, and the Abbot of **Weresorde**, with order, That if the said **M. V.** should not within two Monethes, proue that which he objected against **C. V.** that then they should Intimate the same to the secular Judge, befoze whom the inheritance was in question, that he should not stay any longer vpon the question of legitimation, but proceed to Iudgement in the cause of the inheritance. Which president though it be long befoze the Statute of Bastardie made by **Henry the 6.** and so no writ went from the tempozall Court for the certificat therof: yet it shewes that the Tempozall Judges in those daies did not proceed to iudgement in the principall cause, befoze the incident were decided by the Ordinary; & that they counted bastardy then to be of the Ecclesiast. cognisance; and that it was lawfull for him that was pretended to be a bastard, to appeal from his Ordinary, if either the Ordinary detracted the determination therof, or were suspected of parciality.

And thus far of the incident. There is an other much like precedent to this in the same Kings dayes, but that is in the principall, for that the inheritance came not first in question, but the legitimation it selfe, and the case is as followeth. A certain man called **Raphe**, kept one **Analine**, the wife of one **Allin**, by whom he was supposed to haue begot one **Agatha**, who also being married, had a sonne called **Richard**; **Raphe** going beyond the Sea, left **Richard** and his Mother **Agatha** in possession of all his goods & lands; but newes being after brought, that the said **Raphe** was dead beyond sea, **Frauncis** the brother of the said **Raphe**, spoyled the said **Richard** of the posses-

*Ca. Causam. ext.  
qui filij sunt le-  
gitimi.*



possession of all the goods & lands he had of the said Kaphe his grandfather, for that he did pretend the said Agatha his niece & Mother of the said Richard was not borne of lawfull Matrimonie, so that neither shee her selfe, nor her sonne ought to succeed the brother of the said Frauncis, but that the inheritance thereof did belong vnto himselfe: whereupon the said Richard being thus spoiled by Frauncis his great vncle, obtained letters of restitution to the Bishop of London, the B. of Worcester, & the B. of Excester, vnder this forme; That befoze they entred into the principall cause, which was this, whether the said Agatha were borne in lawfull Matrimonie or not, they should restore the said Richard to his Grandfathers inheritance. But the Bishop of Rome after vnderstanding by the said Delegats, that the plea of inheritance within this Realme, did not belong vnto the Church, but vnto the King, recald that part of his rescript, which concerned the restitution of the said Richard to his inheritance, & gaue order to the foresaid Bishops, to proceed in the cause of legitimization; willing them to inquire whether the said Agatha were borne of the said Aneline in the life time of her husband Allin, and when shee dwelt & cohabited with him, as with her husband, or whether the said Kaphe, father of the said Agatha, kept the said Aneline openly & publikely, while the said Allin yet liued; And if they found it to be so, then they should pronounce her the said Agatha to be a Bastard, for that Aneline her Mother could not be counted to be a wife, but a whoze, which defying her husbands bed, presumed to keep company with an other, her husband yet being alive: But if they found it otherwise, then they should pronounce her the said Agatha to be legitimate. All which was done after the death of the said Raph and Aneline, as the Decretall it selfe shewes: Neyther was there any authoritie that opposed it selfe against that proceeding, but held it to be good and lawfull, though it were in tearmes of speciall Bastardy, for then that which they now call speciall Bastardy, was not borne. Besides hereby it appeareth, that the Ordinaries then did not only proceed in cases of Bastardy incidently, that is, when  
a suit

a suit was befoze begun in the Common Law, vpon a triall of inheritance, & that by writ from the Tempozall Courts, but euen oziginally, & that to pzeare way vnto inheritance, oz any other good that was like to accrue vnto a man by succession, oz to auoyd any inconuenience that might keep him from promotion, as may appeare by this pztize following. //

*Constitut. Otho.  
innotuit de vxo-  
ratis à Beneficijs  
amouendis.*

Priests in the beginning of the Reigne of Henry the 3. yet married secretly, & their Childzen were counted capable of all inheritance, and other benefits that might grow vnto them by lawfull Marriage, so that they were able to pzooue that their parents were lawfully married together by witnesses, oz instruments: which manie Childzen did, eyther vpon hope of some pzeferment that by succession, oz otherwise was like to come vnto them, oz to auoid some inconuenience that otherwise might light vpon them fo2 the want of that pzoofe, some their parents yet liuing, others their parents being dead, and the proceedings befoze the Ordinarie was holden good, to all intents & purposes, euen in the Common Law, fo2 otherwise they would not haue so frequented it: fo2 as yet there was made no positive Law against Marriages of Priests, oz Ministers, but the Church of Rome then plotting against it, fo2 that by that they pretended the cure of Soules was neglected, & the substance of the Church wasted and dissipated, did by Otho then Legate a Latere to Gregory the 9. order by a Constitution, that all such Ministers as were married, should be expelled from their Benefices, & that their Wives & Childzen should be excluded from all such liuelyhood, as the Fathers had got during the time of the Marriage, either by themselves, oz by any middle person, & that the same should become due vnto the Church, wherein they did reside, and that their childzen from that time fo2th should be disabled to inioy holy orders, vnlesse they were otherwise fauozably dispenced withall; which Constitution although it wzought to that effect, to barre Priests fo2 that time of their Marriage, vntill the light of the Gospell burst out, and shewed that that doctrine was erronious, yet to all other effects, the proceeding in the case of Bastardie stood



stood good as a thing due to be done by holy Church. And therefore Linwood comming long after, in his Catalogue that he maketh of Ecclesiasticall causes, reciteth Legitimation for one among the rest, for that in those daies there was no dispute or practise to the contrarie.

And thus far as concerning those things wherein the Ecclesiasticall Law is hindered by the Tempozall in their proceedings contrarie to Law, Statute, and custome aunciently obserued, which was the third part of my generall diuision. Now it followeth that I shew wherein the Ecclesiasticall law may be relieued, & so both the lawes know their own bounds, and not one to ouerbeare the other as they doe at this day, to the great veration of the subiect, and the intollerable confusion of them both, which is the last part of this Treatise.

The meanes therefore to relieue the profession of the Ciuile Law are two. The first is, by the restoring of those things which haue bin powerfully by the Common Law, taken from them, & the bringing of them back againe vnto their old and wonted course: The other is by allowing them the practise of such things as are grieuances in the Common wealth, and fit to be reformed by some court, but yet are by no home Law prouided for.

The first of these stands in two things, whereof the one is the right interpretation of those Lawes, Statutes and customes which are written and deuised in the behalfe of the Ecclesiasticall Law. The other consisteth in the correcting and supplying of such Lawes and Statutes that are either superfluous or defectiue in the penning, made in the behalfe (as it is pretended) of the Ecclesiasticall profession, but yet by reason of the vnperfect penning thereof, are construed for the most part, against them.

The right interpretation of the Lawes, Statutes, and Customes pertaining to the practise, standeth as is pretended in the Iudges mouth, who notwithstanding hath that authoritie from the Soueraigne, and that not to iudge according as him best liketh, but according as the right of the cause doth require.

The supply or reforming of that which is ouerplus, or defective, is in the Parliament, so notwithstanding as that the Prince euermore breatheeth life into that which is done.

Lawes, Statuts, or Customes, are then best interpreted whenas the verie plaine and naturall sence of them is so sought after, and no foraine or strained exposition is mixt with them; so that turneth Justice into wormewood, and Judgement into gall: then that the Judge be not to subtil in his interpretation, but follow such exposition of the Lawes, as men of former age haue vsed to make, if they be not plainly absurd and erronious, for oft shifting of interpretations breedeth great variance in mens states, among such as haue busie heads, & much discrediteth the Law it selfe, as though there were no certainty in it: with which although the sage Judges of our time cannot bee charged, for ought that I know, yet (I cannot tell how) men much complaine that lawes are far otherwise construed in these daies than they were in former ages: which as it is an ordinarie complaint in the Tempozall Courts, so it is not without cause, much lamented at in the spirituall Courts where the interpretation vpon the three Statutes of Wits made by King Henry the eight, and Edward his son, among sundry other inconsistencies of other Lawes, hath such great varietie of sence and vnderstanding in sundry points thereof, as that if the makers thereof were now aliue and the first expositors thereof sat in place of Judgement againe (the Statutes being measured by the interpretation they now make of them) would hardly acknowledge them either to bee the Statutes that they made, or the other did after expound, and declare: for euery of these Statutes, and the sence that was giuen of them, was wholly for the benefit of the Church, according to the tenor thereof, but as they now receiue explication, they are not onely not beneficiall vnto the Church, but the greatest hynderance to the same that may be; for the words are made to iare with the sence, and the sence with the words, neither is there kept any right analogie in them: and therefore the Reuerend Judges are to be intreated (because they



they challenge vnto themselves the opening of the statutes alone, albeit peradventure that be yet sub Iudice, where the Statute of Ecclesiasticall causes is to bee interpreted ) that they would recall such exorbitant interpretations as haue of late gone abroad vpon these Statutes, and restore them to their auncient sence and vnderstanding. No man can so cunningly cloake an interpretation, but another will be as cunning as he to spy it out, and then the discredit will be the Lawes. A small error (saith Aristotle) in the beginning, is a great one in the end, and he that goeth out of the way a little, the longer hee goeth on, the further he is off from the place his voyage was to : and therefore the speedier returne into the way againe is best. The old Proverbe is ; He that goeth plainly goeth surely, which may be best verifed in the exposition of the Law, if any where else : for commonly men offend no where more daungerously than vnder the authoritie of the Law, and therefore one saith very well, that There are two salts required in a Iudge, the one of knowledge, whereby hee may haue skill to Iudge vprightly ; the other of conscience, whereby hee may bee willing to iudge according to that as his skill leadeth him vnto : both which being in the graue Iudges, it is not to bee doubted, but they will bee easily induced to reuiue their owne, and their predecessors interpretations, and reduce such exorbitant expositions as haue scaped out thereof vnto the right and naturall sence thereof : which if perhaps they shall bee loath to doe, for because it makes for them, or for some other like partiall respect, then humble supplication is to bee made vnto his Maiestie, himselfe will be pleased to giue the right sence of those things which are in controuersie betwene both the Iurisdictions : for his Maiestie by communicating his authoritie to his Iudges to expound his Lawes, doth not thereby abdicate the same from himselfe, but that he may assume it againe vnto him, when and as often as him please. Whose interpretation in that is to bee preferred before theirs, first that his interpretation is impartial as hee that will not weaken his left side to make strong

Lib. 1. Politic.

*I. i. num. 8. c.  
leg. b.  
L. i. num. 1. c.  
eod. l. omnes  
populi ff. de in-  
stit. & iure.*

his right (soe so are these Jurisdictions as they are referred vnto his politicke bodie) but will affoord them equall grace and fauour, that he may haue like vse of them both either in foraine or domesticall businesse as occasion shall serue: then that his Judges interpretation maketh right only to them betwene whom the cause is, but his highnesse exposition is a Law vnto all, from which it is not lawfull for any subiect to recede, neither is reuerfable by any, but by himselfe, vpon a second cogitation; or him that hath like authoritie as himselfe hath: and therefore most fit to be interposed betwene Jurisdiction and Jurisdiction, that the one partie bee not Judge against the other in his owne cause, which is both absurd and dangerous.

And let this suffice for the right interpretation of Lawes and Statuts: now it followeth that I speake something of the supplies that may be made to the defects that are in the same.

It is not to be doubted, but it was the full minde & intent of the Law-makers, which made those three Statutes to infeoffe the Ecclesiasticall Courts in the inheritance of all those causes that are comprised in those Statutes, saue those that are by speciall name exempted, and did by the said Statute, as it were deliuer vnto them full and quiet possession of the same, for euen so sundry bzaunches of the said Statute doe shew, as I haue elsewhere made it manifest: and that there hath growne question vpon many points thereof, and that the professors of the Ecclesiasticall law haue bene interrupted in the quiet possession thereof, commeth of the vnperfect penning of the same, and not of any iust title or claime that may be made by the possessors of the other Law therunto: but this is a thing not only proper to these three Statuts, but also Common to all other Statutes which are writ of any Ecclesiasticall causes within this Land; which notwithstanding may be remedied, if it seem good vnto his sacred Maiestie & the rest of the wisdom of y<sup>e</sup> land assembled together at any time for the making of wholsome Lawes and the reforming of the same, by supply of a few wordes in some places or periods



periods that are defective, and yet keeping the true meaning and sense of the same.

As for example in the Statute of the two and thirtieth of Henry the eight in the § wherefore, neere the beginning of the same Statute, the Statute ordering, that all persons of this Realme and other of the Kings Dominions shall truely and effectually set out and pay all and singuler Tythes, according to the lawfull customes and vsages of the Parishes where they grow and become due: because there is a question made where these customes and vsages shall bee tried in the Ecclesiasticall or Tempozall Law; if these or the like words had bene added to the same (to be proued before an Ecclesiasticall Judge after the form of the Ecclesiasticall Law, & not elswhere) the whole matter had bin clære for that point.

And whereas againe in the end of the same Statute, there be some good words tending to the appropriating of these matters of Tythes and Oblations and other Ecclesiasticall duties to the Ecclesiasticall Courts; as that the remedie for them shall be had in the Spirituall Court according to the ordinance of the first part of that Act, and not otherwise: yet because there is no penaltie to that act, busie men easily make a breach thereinto, for that Lawes without penalties, for the most part are weake and of no force: if therefore this or the like supply were made (if any man sue for these or like duties in any other Court, than in the Kings Ecclesiasticall Court, the partie so suing, to forfeit the treble value of that which he sued for to be recovered in the kings Ecclesiasticall Court, where it ought to haue bene commenced by the way of Libell, or Articles, the one halfe thereof shalbe to the king, the other to the partie grieved) many of these suits would easily be met withall. Neither is it to the purpose, that this is matter of money and Lay fee that should be in this sort forfeited, and therefore is not Regularly to bee sued for in the Ecclesiasticall Court; yet because the cause is Ecclesiastical, vpon which the matter of forfeiture ariseth, it may bee verie well allowed, *Ne continentia causarum diuidantur*: and for that ordinarily euery Jurisdiction that is wronged may de-

send it selfe with a penaltie: beside, we do by the like right in the Ecclesiasticall courts, recouer expenses of suits in Law, fees of Aduocats and, proctors and money for redemption of sin, so that it will be no strange matter to haue this kind of suit allowed vnto the Ecclesiasticall Court.

Further, whereas there are in the Statute of Edward the first, chapter 13. in the beginning almost of the said Statute, two clauses vnder paine of forfeiture, one of treble value, for Tythes carried away before they were diuided, set out or agreed for: The other of double value where the Tythes were hurt or impaired by the partie stopping or letting him that had interest therunto to carrie them away, or by withholding or carrying them away himselfe; and the same, is ordered by a clause in the second branch thereof reaching vnto them both, for that a clause put in the end of two sentences, stretcheth it selfe indifferently vnto them both, if there be no more reason it should belong to the one than the other, as there is not in this case (for if it were not so, the first penaltie had no order set downe, how it might be recouered) that the same shall be recouered according to the Kings Ecclesiasticall Law: to which if there were added this word (onely, and not elsewhere, or otherwise) and they martialed in their right places there were nothing more sure or strong.

Moreover, whereas in the first prouiso of that Statute it is decreed, that none shall be compelled to pay any manner of Tythes for any Hereditaments which by the Lawes or Statutes of this Realme, or by any Priuiledge, Prescription, or composition Real, are not chargeable therewithall; whereby it is doubtfull in what Court the said Exemptions are to be alleaged: if there were inserted these words, or other of like nature (the said Lawes, Statutes, Priuiledges, Prescriptions, or Compositions Real to be alledged, argued, trauesed, and determined before the Ecclesiasticall Judge onely according to the forme of the Ecclesiasticall Lawes, and not elsewhere) vpon like forfeiture of treble damages, as is aforesaid, it would make this point sure vnto the Ecclesiasticall Law.

Duer



ouer and beside this, whereas in the same statute there is a discharge allowed to barren, heath, & wast ground, in some for not payment of tithes, in other for the manner of payment of them for the space of seauen yeares after the improving and conuerting of them into Arable ground or meadowe; it would make the matter plaine, which lawe shoulde haue the pronouncing thereupon, if there were added these or the like wordes (so the same ground be proued in seime of law in the Ecclesiasticall Court to be barren heath and wast.)

Lastly wheras in the said Statut among other limitations of causes wherin the Ecclesiasticall Judge is not to deale by vertue of y<sup>e</sup> said Statut, there is one in these wordes, next the end of the said Statut (ne in any matter wherof the Kings Court of right ought to haue Jurisdiction) which limitation is so vage & large, that therout there may be forged as many diuers kinds of Prohibitions, as the Poets fained Vulcan euer made thunderboults for Iupiter. And therfore it were very wel & consonant to the good meaning of the said Statut, this vagenes were restrained & reduced to a more certainty of matter by these or like wordes, By any antient law or Statut of this land.

And so far as concerning the imperfection of the said three Statuts, and how they may be amended and made reducible to the first meaning and intent of the makers therof, by some smale supplie, alteration, or change of wordes, the sence and ground-woork standing euer y<sup>e</sup> same, according to the wisdom of his Maiestie & his great counsel assembled in parliament.

Now it followeth I shewe wherein the practice of the Ecclesiasticall Law, vnder which I comprise the Ciuile Lawe so far as it is in vse among vs, may be increased to the benefit of the subiect & the enlargement of the profession without the preiudice of the common law. And that I may first begin of the pietie of Fathers towards children, & children againe towards their parents, which is the beginning of all common wealths, for euen Nature it selfe hath taught that not only in the most brutish people that be, but also settled it in y<sup>e</sup> sauaggest kind of beasts that are vpon the earth, the one to cherish that which it selfe hath brought out, and the other to loue againe that

that which hath brought it out : and yet, what Law is here in England, which prouideth for the one or the other, vnlesse it be the Statute of the eight of Elizabeth: that is but for poore folks children onely (where otherwise they should be a burthen to the Parish) but for the Parents themselves, or other children that are cast off, either by the negligence or the vnnaturalnesse of the one toward the other, there is no prouision at all. Yet by the Ciuile Law there is a prouision made, whereby both the Father is compelled to acknowledge his child (if there be any variance betwene the husband and the wife vpon any Jealousie or suspicion of Adulterie, if the same cannot be proued by the womans owne confession, by witnesses, by the act it selfe, or some other violent presumption) and to nourish and maintaine the same; but if the fault appeare against her, and it be so sentenced by the Judge, then may he as well refuse the one as the other: but for other children vpon whom there is no such doubt, the Parents may be constrained to maintaine, cloth, and feed them, and to set them out a Portion of their goods, so that either the State and facultie of the Parents will beare it, or the children haue not deserved to the contrarie, wherefore they should not in that sort be prouided for. And as the Father in this sort is bound vnto the Child, so the child againe is obliged vnto his Parents to prouide for their sustentance, so far forth as their abilitie will reach vnto: for it is very vnnaturall the Parents should want, so long as the children haue meanes to relieue them. In both which cases, if either the Parents refuse to admit of their Children, or the Children againe refuse to yeld comfort vnto their Parents, the Judge may interpose his authoritie, and inioyne each to maintaine other according to their abilitie, and as to his discretion shall seeme meet, which if any of them should deny to yeld vnto, the Judge may by Distresse of their goods taken and sold to the value thereof, compell them to performe his order: and yet that onely in case of Maintenance, and not to discharge debts wherein either of them stand bound vnto their creditors.

A man here in England dying and leauing his wife *Cretula*,

*ff. de agnoscend.  
& alendis liberis  
vel parentib.*

*C. de alendis li-  
beris vel paren-  
tib.*

*ff. de ventre in-  
spiciendo. custo-  
diendoque partu.*

*ff. de officio pro-  
consulis. l. nequic-  
quam S. de p. ano.*



cutrix, shee after marryng, carrieth away all his state vnto her second husband, who giues & spends therof as him listeth without any regard of the children of the first husband, by whom all, or most of those goods came, insomuch as many times those children when they come to age, & are to go abroad into the world, they haue nothing to begin the world withal, whereby many of them come to beggerie, and others to more fearefull ends ( for necessitie as the Proverb hath it, is a hard weapon ) neyther is there any meanes in this common wealth to relieue this mischiese, for ought I can learne: but by the Ciuile Law there is verie good remedy, for by that Law neyther the woman suruiuing her husband, neyther the man suruiuing his wife, hauing issue betwene them during the Matrimony haue the proprietie of those goods, which either of them brought one to the other, and are left behind by the defunct; but the proprietie is the childrens of the deceased, & the vse or benefit his or hers only which doth suruiue, during his or her naturall life: which course if it were taken here in England, manie poore fatherlesse and motherlesse Children would be in better state than they are, for then howsoeuer their present state were hard, yet their future would be better, when they should be secured to inioy their fathers or mothers right: neither could such men or women which marrye, or are married with persons of this sort, much complaine if this Law were established here, for so should they haue, though not a perpetuitie in an other mans state, yet a long and beneficiall fruition thereof, euen so long as the partie in whom they were interested did liue: but for the retorne thereof vnto the right owners, the Law is so scrupulous, that if the husband or wife doe remarry, it will haue him that is to marry the widdow bound with good suerties for due restitution of the defuncts part, vnto the children of the former marriage.

An other inconuenience there is in Executors in this land Colen german to the former, which goeth altogether vntrouled, whereby I gesse there is no Law in this land to correct it. And that is, the trifling of Executors in paying of Le-

*L. 1. §. 1. 2. & 3.  
ff. ut legatorum  
nomine cauean-  
tur.*

*L. hac autem ff.  
si cui plus quam  
per Legem fal-  
cidiam.  
ff. de regulis iu-  
ris L. vani ti-  
moris.*

*L. Nisi si dolo  
S. si Legatari-  
us ff. si cui plus  
quam per legem  
falcidiam licu-  
erit.*

*ff. Si quis omitta  
causa testament.*

*L. nam facit to-  
tum, l. 4 ff. de  
heredib. institum  
end. l. paterfa-  
milias, §. 3.*

gacies and bequests, vnder pretence of debts vnknown, which they make shew they must prouide for, vpon danger of their owne indemnitie; whereby many Legacies are neuer paid, but stand as it were suspended vntil the day of Dome. Against this abuse the Ciuile Law hath two remedies: One by exacting bond of the Executoz, that he shall pay the Legacies without fraud or deceit, according to the will of the defunct; The other, that if he refuse so to do, then the Judge may put the partie complaynant in the possession of that which is demanded: for it is not enough for the Heire or Executoz to pretend a debt, to the end that he may stay the legacies which the testatoz hath giuen, in his hand, but he must make plain & manifest vnto the Judge, there is such a debt owing, & that the suit therupon is either already begun, or very like to bee begun in verie short time, without fraud or collusion, otherwise many of those pretences & threats may be vaine & elusory. And in case there be any such iust cause of feare in deed, or there be any such suit in truth commenced vpon the same, the Executoz may secure himself by bond or suertie from the Legatozie, that in case the debt be euicted of him, he shal repay to the Executoz what he hath receiued: wherein, although it may be said, it is safer for the executoz to secure himself by keeping the Legacie stil in his hand, than to trust vpon suerty or other caution, for that these prouisions many times are fraile; yet since this kind of dealing is iniurious to the Legatozie, & the withholding thereof, for the most part, hath no honest defence, but is grounded vpon deceit and couetousnesse, it were behoofull for the Common wealth, such ill dealing were redressed: for so mens Wills, which are their last Ordinances, (than the which Princes haue granted no greater benefit to men, than that in their life time they may dispose how their goods shalbe bestowed after their death) shall haue that end the Testatozs themselves intended: which if they had known in their life time their Executozs would not haue performed, they would neuer haue put them in trust as they did. Beside, hereby the names of Executozs which now are charged with manifold imputations, by the ill dealing of some, shal by this means



means be vnburdened & restozed vnto their former credit, which was, to discharge the trust that by the Defunct was reposed vpon them: soz the Will of the defunct cannot bee defrauded without great sin.

An other mischiese there is in Executors & Administrators, not only vncontreulable by the Law of this Land, but rather allowed & iustified by it; & that is when they haue once got the authoritie into their hands, & praysed all at the lowest rate, they wil sell away all at the highest price they can, & answere the poore Children, & Legatories, soz whose good they were appointed Executors, at the value in the Inuentarie only, contrarie to all right & reason: soz by the law, an Executor is to sel

nothing of those things which are left vnto the Children, or Legatories, but such things only, which by keeping cannot be kept, or which being kept, will be chargeable to the inheritance: or otherwise the Testator were so indebted, that his state must needs be sold, soz the satisfying of the Creditors: or

*ff. de reb. eorū  
quæ sub tutela  
sunt sine decreto  
nō alienādīs, vel  
obligādīs. tot. tit.  
et ibi Bartol in  
rubrica.*

lastly, that he himselfe ordered by his Will something should be sold. But soz such things as may be kept, & by keeping will not be the worse, he ought precisely to preserve them, specially where the Testator hath bequeathed any thing in kind. And if he sel ought of those things which he ought not to sel, he may not sel it but by the decree of y<sup>e</sup> Judge interposed vpon y<sup>e</sup> same, & vpon iust cause proued befoze him: wherin if it appear after, y<sup>e</sup> Judge was abused, by any false allegation & corrupt testimony, the sale is void, & the Heir, when he comes to his full age, or within 5. years after, may reuerse & recouer that which is thus sold by collusion, out of the hands of him to whom it was sold, as being done against the authority of the law. And that it may be better vnderstood, how precise y<sup>e</sup> law is in this point, & what things it alloweth may be sold without y<sup>e</sup> decree of the Judge, & what not, I wil set downe the words of the Law it selfe, speaking of Tutors & gouernors of Wuyles; whose place Executors & Administrators do supply, so far forth as they haue y<sup>e</sup> tuition & gouernance of minozs during their vnderage, faithfully translated. And it is a law of Constantin the great, repprouing a former law of Seuerus the Emperoz, which gaue

*C. de admini-  
stratōe mīn,  
vel curatorū, l.  
lex qua.*

leauē to Tutoꝝ and Curatoꝝ to sell away al the gold, ſiluer, pꝛecious ſtone, apparrell, and other rich moueables the Teſtatoꝝ had, and to bꝛing the ſame into money, which turned greatly to the hinderance of many Orphans: Whereupon Conſtantine after he had firſt oꝛdered, nothing ſhould bee ſold of the pearl, pꝛecious ſtone, naperie, vtensels of the houſe and other neceſſarie ſtuffe and oꝛnaments of the ſame, ſaith thus. Neither ſhall it be lawfull foꝛ them (meaning the Tutoꝝ oꝛ Curatoꝝ) to ſell the houſe wherein the Father died, and the child grew vp, wherein it is woe enough to the child not to ſee his auncelloꝝ images not faſtened vp, oꝛ els puld downe. Therefore let the houſe, and all other his moueable goods ſtill remaine in the Patrimonie of the child, neither let any edifices oꝛ buildings, which came in good reparation with the inheritance, ruine oꝛ decay by colluſion of the Tutoꝝ: but rather if the Father, oꝛ he whoſoeuer the minoꝝ was heire vnto, leſt any building in decay, let the Tutoꝝ both by the Teſtimonie of the woꝛke it ſelfe, and the faith of many be compelled to repaire it: foꝛ ſo the yearely rent will bꝛing in moꝛe pꝛofit to the Minoꝝ, than the pꝛice of the things being deceitfully ſold vnder ſoot, will doe the Minoꝝ any good. Neither doth this law only make pꝛouiſion againſt Tutoꝝ, but alſo againſt immodest and intemperate women, which many times gage vnto their new married husbands, not only their owne ſtate, but euen the ſtate and liues of their children. Further, it croſſeth the courſe of putting the childrens money to vſurie (notwithſtanding aunciently it was thought, therein conſiſted all the ſtrength of the Patrimonie) foꝛ that courſe is ſeldome long, ſcarcelly continuall and ſtable, and that therby many times the money being loſt the childrens ſtate come to nothing: and therfoꝛe his conſluſion is, The Tutoꝝ ſhould ſell nothing, without the oꝛder of the Iudge, ſauing the Teſtatoꝝ ouerwoꝛne apparrell, oꝛ thoſe things which by keeping could not be kept from coꝛruption, and ſuch cattell as were ſuperfluous. Whereby it appeareth how carefull that age was to giue way to Crecutoꝝ by ſale of the Teſtatoꝝ goods, to make gaine of the Orphans; nei-  
ther



ther is this age better than that, but that which was feared then, may be provided for now, by like authoritie as was then.

In this Land a man dying, leauing Legacies to his children, and his wife Executrix, or dying intestate, and she taking administration, and in her second marriage bringing all her first husbands state, & her childrens portions vnto her second husband, and then dying, there is no remedie against the second husband, to recouer the said Legacies or portions due vnto the children out of his hands, because he is neither Executor, nor Administrator, and that he came not to those goods by wrong, but by the deliuerie of the Executrix, with whom he married: but yet by the Ciuill Law there is, and that by this claime, that the said goods came vnto his hands, and that it is no reason any should be made rich by my goods against my wil, for Legataries haue no action against any as Administrators in their owne wrong or hinderers of the performance of the last Will of the deceased, but Executors only, & they then alone, when the party hauing it, holds it by wrong and not by Lawfull deliuerie, which in this case is otherwise.

*L. si & me ff. de rebus creditis si certum petatur.*

By the Law of this Land, there is no provision to preserve the state of a prodigall person from spoile, which neither hath regard of time, nor end of spending, vnlesse the Father provide for this mischief in his Will, or by some other good order in his life, but he is suffered to wast and spend his goods vntill there be nothing left (as though the Prince and Common wealth had no interest in such a subiect, to see he did not waste his state, and abuse his goods) whereby many great houses are ouerthrowne, and many children whom the Fathers carefully provided for, neuer leauing raking and scraping all their life time, that their children after them might liue in great plentie and abundance, come to great shame and beggerie. But the Ciuill Law hath remedie for it: for the Law counting such a man that is in this sort impotent in his deeds, howsoeuer he be otherwise sensible in his words, to be halfe mad, and to be a young man in his manners, how old soeuer otherwise he be in his yeares, sets a Curator ouer him

*ff. de curatoriis. furioso, & alio extra minores dando.*

for the preserving & well ordering of their state, no otherwise than if they were children or mad men indeed, who so long haue power ouer them & their goods, vntil they come to sane maners to which if they once returne curatozs office ceaseth.

*Let mulieri. ff.  
cod.*

The like they doe to a widow or sole woman which liueth riotously, hauing neither regard of her fame, nor of her state.

I find an old practise aunciently vsed in the Ecclesiasticall courts, for restraining Executors or Administratozs for dealing couenously alone in an Executorship or Administratozship, when there are more Executors named in a Will than one, or more Administratozs deputed by the Ordinarie in an Administration than one, which were well if it were recald & brought back to his former vse againe. For now, as things stand many times one capzicious fellow named an Executor in a Will, or appointed Administrator by the Ordinarie with some other wel meaning men, getting a start in this businesse of the rest, ingroseth all into his owne hands, and without priuie or concurrence of the other, selleth, releaseth, & disposeth all at his owne pleasure, contrarie to the mind either of the Testator, or the Ordinarie, who would not haue named so many in the Will or Administration, but to the intent that all might or should execute and administer, & one communicate their acts with another. The contrarie whereof is many times very preiudiciall and hurtfull, to those that are to take benefit by the said Will or Administration, who for the want of the due performance of this kind of proceeding, are defrauded of all that which in right or reason should haue come vnto them, either by the Testators good will, or by the benefit of the Law. And yet there is no remedie for this in law, so far as I know, for that al these making but one person in law, the Law yeelds no action to the one to sue the other: but yet the ancient practise of the Ecclesiasticall Law hath remedie, which would redresse all this mischief, if it were cald againe to vie, & might go without contralinent, as the equitie of the cause doth require. And the remedie is this, that such other of the Executors or Administratozs as are in this sort interuerted from the execution of the Will or Administration by the subtiltie



tiltie of any like Executoz or Administratoz, should craue the assistance of the Judge, & will him by vertue of his office, to call in such practick Executoz or Administratoz, and to commaund him vnder paine of excommunication, he proceed no further in the sole execution therof, but comunicat all his acts & dealings with the rest of his Coexecutozs or Coadministratozs: which if it were so ordered, would make many mens Wills & Administrations better perfozmed than they are, & a great sort of poore Dylphans states moze sure & certaine, than comonly they are in such executozs or administratozs hands.

And certainly in this case, there is some good vse of Superuisors in dead mens Wills (whom many men merily iest at, calling them candle-holders, as though they could do nothing else in the execution therof, but hold the candle while the Executozs tel the Defuncts money) if they might be permitted to put in practise that authoritie which the Law giueth them, and that is when they find any Executoz deale fraudulently in the execution of any Testatozs Will, wherein they are named superuisors, or do ingrosse all the state of the Defunct into his hands, as hath bin before said, they cal him to a particuler accout, that it may be seen how the administration stands, & ech executoz may comunicat to other their particuler receits & disbursments: which if any shal refuse to do, then may the superuisor make therof cōplaint vnto the Judge, as though y<sup>e</sup> ff. de admini-  
same man dealt not truly in the execution therof, who though stratione tutorū.  
perhaps in the beginning could not take bond of him for the l. 3. §. 1.  
true execution of the Will, because the Testatoz had made choice of him, & therein approued his faith, & that no man required caution of him for any Legacie in the wil bequeathed, (in which case y<sup>e</sup> Judge might take bond of him for security of such legacies as are bequethed in the wil, yea though his faith hath bin approued by y<sup>e</sup> Ordinary, as hath bin before remembred) yet may y<sup>e</sup> Judge in this case, if he find him iustly suspected of fraud & deceit, remoue him by the learning of that Law. For neither the Testatoz himselte, if hee were a  
liue againe, would indure him in this case, but would blot his name out of his Will, neither ought the Judge to suffer  
him

*Instit. de suspec-  
tis tutorib. vel  
curator. noto sit.*

him, whose care is to see that dead mens Wills take their effect, according to the Testators meaning. All which, the law hath prouision for, and for infinit things else of like good order in these cases, if they might be suffered to put them in execution without impeachment.

And so far as concerning those things wherein the Ciuile and the Ecclesiasticall Law might be relieved without prejudice to the common Law, for because they haue no practise thereof: and yet doe not I bring forth these as the onely causes wherein the Ciuill and Ecclesiasticall Law may be licensed to deale in, ouer and besides the practise of those things that they haue already, but that these are few among many other which might be sorted out, if so be there were any hope for the further enlargement of the profession. But now to the necessitie of the maintenance of the ciuill and Ecclesiasticall Law in this Realme, as they are now practised or ought to be practised, which was a thing first propounded, but last put in execution in this worke.

Albeit that which hath bene already said as concerning the Ciuile and Ecclesiasticall Law may well imply the necessarie preservation of them both within this Land, yet because it was a thing I promised to shew in the beginning of this Treatise after I had gone ouer the rest of the parts of my diuision, I will in a word or two, make plaine the necessitie thereof.

And therefore for a ground of all the rest, I will assume this for a matter confessed, that euery man knowes, that euery well ordered Common wealth stands on two parts principally, the publicke part, which consisteth of the Prince and people, and the Ecclesiasticall part, which standeth in *Sacris & Sacerdotibus*. And therefore well said the Emperour, Two of the greatest things that God euer gaue vnto the world (meaning earthly things) was the Empire or seculer gouernment whereby the outward man is ordered & made, as Aristotle saith, *bonus ciuis*, that is, a good and loyall subiect: and the Priesthood whereby the inward man is ruled, and is made, as the said autho<sup>r</sup> testifieth, *bonus vir*, that is, a good and

*In authent. quod  
oportet epos in  
prim. col. 1.  
Auth. de non a-  
lienand. &  
rebus Ecclie. S. 1.*



and vertuous man, which are two wonderfull effects of the whole gouernment in general; neither can the one of these be wanting, but the other will bee ruinated and brought to desolation.

Secondly, no man is ignozant of this, but in politicke gouernment two things sway the whole state, the one is peace at home, and the other is war abroad: which as they haue their seasons, so they haue their causes and effects, the one from counsell at home, the other from discipline abroad; neither can the one or the other of these be maintained, but by their priuate and proper Lawes.

Beside, in peace who seeth not, there is as much need of bent by sea, for to benefit the common wealth by, either by importation of those things that wee want at home, or by exportation of those things that we abound with; as there is prouision to be made for the increasing and preserving of those things that we haue rising and growing by land in our owne contrey, neither of which can be had or intoyed without their proper lawes fit and appertaining to either policie. And what Law is there that ordereth these busineses but the Ciuile law onely, which giueth a forme to Navigation, and all occurrents that happen by sea, whether they bee in or about the Navigation it selfe or the contracts, or as it were contracts, that are made in, vpon, or beyond the same.

As a Legall forme is requisite in peace at home, and Marine affaires abroad, that euery thing may haue his due effect according to the right thereof, so also it is necessarie in warlike exploits vpon the Sea that euery action haue his limits and bounds, wherby Justice may be ministred: which if it bee to bee obserued where lawfull war is held betweene Prince and Prince, that euery one bee not left vnto his own lust, much moze is it expedient to be put in vse in Piracies and other Sea-robberies, where the innocent is spoiled, and the spoiler is enriched. The redresse whereof is not, but by the Admirall Law, to whom the Princes of this Land haue graunted that authoritie.

For the often commerce of Princes with Princes, & the negotiation that one State hath with another, there is nothing more necessarie, than frequent Embassages, wherby intelligence may be had what danger one State intendeth to another, & how the same may be prevented by Leagues or otherwise, and how the same may be made and maintained: I know not what Law serues better for all these ends and purposes than the Ciuile Law.

In matters that appertaine to the soules health, the Preacher teacheth out of the word of God, wherein the right seruice of God standeth; he ministrerh the Sacraments vnto the people, and instructeth them in other fundamental points of Religion: but it is the Ecclesiasticall Law that compelleth men to the due obseruance hereof, and punisheth the transgressors.

All men grant, that there is a prouision to be made for the minister, for that it is against reason that any man should go to warfare on his charges: but it is the Law of the Church that sets out this prouision, and yeeldeth remedie for the recovery thereof, if it be denied.

Nothing is more due vnto the dead, than that their last Wills should be obserued; for that it is such an ordinance as a man hath not in his power againe, when God hath once cald him hence, neither is there any thing that Princes haue more graciously granted vnto their subiects, than that in their life time they may dispose of that, which after they are dead, is none of theirs; and yet shall take place when they are not, as though yet they were theirs: in which prouision the Ciuile and the Ecclesiasticall Law, are aboue all other Lawes most Religious.

Chriftening, Wedding, Burying, wherby a man entreteth into this world, conuerseth in the world, and returneth againe vnto the earth from whence he was taken, and so after passeth to glorie, and euerlasting blisse, are euery one of the Ecclesiasticall cognisance.

How many men of great skill, such as few Princes haue greater in all kind of learning, are of this ranke, not only in the



the societie of them that prolesse this knowledge here in the chiefest citie of the Land, but also in both the vniuersities and in sundry other parts of this Realme not strangers, or forreiners, but home-bozne subiects of the same faith, of the same Religion, of the same kindred, and familie, of like allegiance to the Prince, and seruite to the common wealth, as other his good subiects are, euen those that oppugne this profession chiefly: whose practise, if it be ouerthrowne, or prouision lessened, not onely those that are now present, and make profession of this knowledge shall be faine to turne their copie, but those that are futurely to come, wil change their profession, when they see there is no reward or estimation belonging thereto: for it is Honour that nourisheth Arts, and no man will follow that profession that is out of count, and credit; but euery Father will say vnto his son in like sort as Ouids Father said to him, when hee saw him addit and giue himselte wholly to Poetrie, *Studium quid inutile sentas?* It was aunciently said of the profession of these Lawes, *Dat Iustinianus honores*; but now it is so far off from that, that it confers Honours, as that it is almost a discredit for any man to bee a Ciuilian in this State, and the profession thereof doth scarce keepe beggerie from the gate.

As God doth dispose his gouernment by Justice and mercie (whereof notwithstanding mercie hath the supream place in the Lords Tabernacle, as that which was put aboue vpon the Arke, wherein were the two Tables of Stone, in which the Law was written, to which Saint James alluding, saith that Mercie triumpheth ouer Judgement) so the Princes of this Land to the imitation of that heauenly representation, haue appointed two supream seats of Gouernment within this Land, the one of Justice, wherein nothing but the strict letter of the Law is obserued, the other of Mercie, wherein the rigor of the Law is tempered with the sweetnesse of equitie, which is nothing els but mercie qualifying the sharpnesse of Justice: to either which Courts they haue sorted men

Exod. 25.

James 1.

fit for their skill and education to manage the same, that is, to the seat of Justice, the professors of the Law of this Land, who may be thought best to know the Justice of the same: but to the other they have assigned the professors of the Ciuile law, for that a great sort of titles of that law, are titles of equitie, as whatsoever is *Ius pratorum*, or *Ius adilicum*, with them is matter of equitie; so that they might seeme best able for their skill in these tytles (of which no other Law hath the like) to assist the Lord Chancellor in matters of conscience. Who though he be a man, for the most part, chosen by the Prince himselfe, out of the rest of the Sages of this Land, for his speciall good parts of learning and integritie aboue the rest (as now the Honorable person is that occupieth that place, who is as Tully said of that eloquent Orator Marcus Crassus, *non vnus ex multis, sed vnus inter omnes prope singularis*) so that they might be thought for their great and eminent wisdom in all things appertaining to their place, able to direct themselves; yet because it is, *Diuinitatis potius quam humanitatis, omnium rerum habere memoriam, & in nullo errare*, as one well saith, It was prouidently done by Princes of former ages, to ioine to these great personages, men furnished with knowledge in these cases of conscience; wherein if they should at any time stick, they might be aduised by them that are assessors with them, what they find in the Law proportionable to the case in hand, that thereto they might square their decree, or order accordingly; whose varietie in these cases is such, that hardly there can fall out any case in practise, but there will be some law, in that learning, conformable vnto it: which opportunitie of men furnished with this knowledge for that seat, his Patencie shall want, vnlesse the study of the Ciuile and Ecclesiasticall Law be maintained, which also for the cases of equitie and conscience therein, is called of the old writers, *Aequitas Canonica*.

And what reason gaue occasion to the precedent Princes to place men indowed with the skill of the Ciuile Law, in the court of Chancerie, the same also ministred to them minds to commit vnto the selfe same men, the ordering of their Courts  
of



of Requests: for that therein, for the most part, are handled more miserable persons causes, as Widowes and Orphans, and other distressed people, whose cases wholly rely on pietie and conscience, as a fit subiect for that Law to deal in; which also will take a maine, if the studie of the Civile Law bee not vpholden.

So then, to deny a free course to the Civile and Ecclesiasticall Law in this Land, in such things as appertaine to their profession, or to abridge the maintenance thereof, is to spoile his Maiestie of a part of his Honour (whose glorie it is to be furnished with all sort of professions necessarie for his State, and beneficiall for his subiect) to weaken the State publicke, and to bereaue it of graue and sage men, to aduise the State in matters of doubt and controuersie betwene foraine Nations and themselves, to disarm the Church of her faithfull friends and followers, and so to cut the sinewes (as much as in them lyeth) of Ecclesiasticall discipline, and to expose her to the teeth of those, who for these many yeares haue sought to deuour her vp: and so now would do it, if the mercifull prouidence of God, and the gracious eye of the Prince did not watch ouer her.

And so far of the necessitie of these two professions, and generally of the vse and disuse of the Civile and Ecclesiasticall Law in this Land, and wherein it is overlaid by the Common Law, and how it may be relieved, if it come good vnto his Maiestie, and the wisdom of this Realme. All which I haue written not of any purpose to derogate from the credit of that Law, vnder which I was borne, and by which I hold that small maintenance that I haue: for I reuerence it as a necessarie Law for this State, and make such reckoning of euerie of the professors in his place, as becometh me: but that it pitieth me, and not only me, but all those that tender good learning, and haue no preiudicat minde toward the Common Law, to see two such Noble Sciences as the Civile and Ecclesiasticall Law are, so to be disgraced, as that there is no more reckoning made of them, or their professors, than if they were matters and men of no worth, and

fit or apt for no seruice in the common wealth: and yet notwithstanding, the vse of them is so necessarie, as that the common wealth cannot want the seruice of them in matters of great importance to the State, which (if the profession should come to a downefall, as it is like shortly to doe, if it be no more cherished and made of than it is) will be sooner seene by the want of them, than is now perceined by the hauing of them; and then perhaps, will the State lament for the losse of such a goodly Profession, when it will bee hardly recovered againe, as the children of Israell did for the Tribe of Benjamin, when they had in one day slaine well nigh the whole number of them.

*FINIS.*





